International Labour Conference
85th Session 1997

Report III
(Part 1A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

General report and observations concerning particular countries

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International Labour Office Geneva

International Labour Conference
85th Session 1997

Report III
(Part 1A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

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Albania	I B, No. 87 III	Art. 22, Nos. 10, 59, 87, 98, 100
Algeria	General Report, paras. 102, 109, 113 I A and B, Nos. 13, 29, 32, 62, 122 III	Art. 22, general Art. 22, Nos. 19, 87, 98, 100, 138
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Australia	I B, No. 87	Art. 22, Nos. 10, 16, 100, 158 Art. 35, No. 10
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Barbados	General Report, paras. 102, 113 I B, Nos. 87, 100, 118	Art. 22, general Art. 22, Nos. 102, 111, 122, 128, 144 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
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Colombia	I B, Nos. 26, 87, 95, 98, 106	Art. 22, Nos. 26, 87, 98, 100 Subm.
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Luxembourg	General Report, paras. 102, 113	Art. 22, general Art. 22, Nos. 9, 13, 138
Madagascar	General Report, para. 138 I B, Nos. 87, 100 III	Art. 22, Nos. 13, 87, 95, 100, 111, 122

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Malaysia	I B, Nos. 19, 97	Subm.
Mali	I B, No. 87	Art. 22, Nos. 100, 105 Subm.
Malta	I B, No. 87	Art. 22, Nos. 13, 73, 100, 138, 149 Subm.
Mauritania	General Report, para. 142 I B, Nos. 81, 87, 111, 118 III	Art. 22, Nos. 81, 111, 118
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Mongolia	III	Art. 22, Nos. 87, 100, 103, 122, 123
Morocco	General Report, paras. 102, 113 I B, Nos. 81, 98, 100, 105, 122 III	Art. 22, general Art. 22, Nos. 81, 100, 111, 129, 158
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Myanmar	General Report, paras. 102, 113 I B, Nos. 17, 29, 52, 87	Art. 22, general Subm.
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Saint Lucia	General Report, paras. 102, 113, 138, 142 I A and B, Nos. 17, 87, 98 III	Art. 22, Nos. 5, 19, 94, 95, 97, 100, 111

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
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San Marino		Subm.
Sao Tome and Principe	General Report, paras. 102, 109, 113 I A and B, Nos. 17, 18, 19 III	Art. 22, Nos. 17, 19, 88, 100, 111
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Senegal	General Report, paras. 102, 113 I B, Nos. 87, 105	Art. 22, general Art. 22, Nos. 13, 19, 29, 100, 102, 105, 111, 122, 125 Subm.
Seychelles	General Report, paras. 102, 109, 113, 138 I A and B, No. 8 III	Art. 22, Nos. 16, 87, 105
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Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
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Tajikistan	General Report, para. 109 I A	Art. 22, No. 87 Subm.
United Republic of Tanzania	General Report, paras. 102, 113, 138 I B, Nos. 29, 88, 105 III	Art. 22, general Art. 22, Nos. 29, 94, 105, 134
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Togo	I B, Nos. 87, 138	Art. 22, Nos. 100, 138
Trinidad and Tobago	General Report, para. 142 I B, Nos. 87, 105 III	Art. 22, No. 29
Tunisia	General Report, paras. 102, 113 I B, Nos. 29, 87, 105, 122	Art. 22, general Art. 22, Nos. 29, 100, 105, 114, 118, 142
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Uganda	I B, Nos. 17, 105	Art. 22, general Art. 22, Nos. 29, 144, 154 Subm.
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Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
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Zimbabwe	I B, No. 45	Art. 22, Nos. 26, 99, 100 Subm.

[1] The roman numerals and letters refer to sections of Part Two of this report and the arabic numerals to the numbers of the Conventions.

[2] The abbreviations used in respect of direct requests are the following:

"Art. 22": application of ratified Conventions in member States.

"Art. 35": application of ratified Conventions in non-metropolitan territories.

"Subm.": submission of Conventions and Recommendations to the competent authorities.

The numbers refer to Conventions.

PART ONE

General Report

GENERAL REPORT

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 67th Session in Geneva from 28 November to 13 December 1996. The Committee has the honour to present its report to the Governing Body.

2. The Committee noted with regret that Mrs. Badria AL-AWADI asked to be relieved of her duties as member of the Committee. It would like to pay tribute to the outstanding contribution she made to the work of the Committee during her 13 years as a member, due to her vast experience and steadfast commitment to the principles of the ILO.

3. The Governing Body has appointed Mr. Amadou SÔ as a member of the Committee. It gave the Committee great pleasure to welcome him to its present session.

4. The present composition of the Committee is as follows:

Ms. Janice R. BELLACE (United States),
  Professor of Legal Studies and Management, and Deputy Dean of the Wharton School, University of Pennsylvania; Adjunct Professor at the University of Pennsylvania Law School; General Editor, Comparative Labor Law Journal; member of the Executive Board of the US branch of the International Society of Labour Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former secretary of the Section on Labor Law, American Bar Association;

Mr. Prafullachandra Natvarlal BHAGWATI (India),
  Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the National Committee for Social and Economic Welfare of the Government of India; Ombudsman for the national newspaper *Times of India*; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of El Taller; Chairman of the Panel for Social Audit of Telecom and Postal Services in India; member of the United Nations Human Rights Committee;

The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados),
Former Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica;

Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico),
Doctor of Law; former President of the Senate of the Republic (1989) and of the Foreign Relations Committee; former President of the Population and Development Committee of the Chamber of Deputies and member of the Labour and Social Insurance Committee; Professor of International Public Law at the Law Faculty of the National Autonomous University of Mexico; former President of the Inter-American Parliamentary Group on Population and Development and former Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; former Director of the National Institute for Labour Studies and former editor of the Mexican Labour Review;

Ms. Robyn A. LAYTON, Q.C. (Australia),
Barrister-at-Law; Director, National Rail Corporation; former Commissioner on Health Insurance Commission; former chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal;

Mrs. Ewa LETOWSKA (Poland),
Professor of Civil Law (Institute of Legal Studies of the Polish Academy of Sciences); former parliamentary ombudsman; former member of the Legislative Council to the Council of Ministers; former member of the Commission for the Reform of Civil Law; member of the Commission for Civil Law Codification; member of the Helsinki Committee; member of the International Commission of Jurists;

Mr. Roman Zinovievich LIVSHITZ (Russian Federation),
Doctor of Law; Principal Researcher at the Institute of State and Law of the Academy of Sciences of the Russian Federation; Professor of Labour Law and Jurisprudence at the Moscow International (Russian-American) University; member of the Scientific Advisory Council at the Supreme Court of the Russian Federation; honorary lawyer of the Russian Federation;

Baron Bernd von MAYDELL (Germany),
Professor of Civil Law, Labour Law and Social Security Law; Director of the Max Planck Institute for Foreign and International Social Law (Munich); President of the German Section of the International Society of Labour Law and Social Security;

Mr. Cassio MESQUITA BARROS (Brazil),
Independent lawyer specializing in labour relations (Sao Paulo); Titular Professor of Labour Law at the Law School of the public University of Sao Paulo and the Law School of the private Pontifical Catholic University of Sao Paulo; Academic Adviser, San Martin de Porres University (Lima); winner of the medal for "Honra ao Merito de Trabalho" awarded by Decree of the President of the Republic for a

major contribution to the development of labour law; winner of the medal for "Honra ao Merito Judiciario do Trabalho" awarded by the Higher Labour Tribunal for his important contribution to the administration of justice; Honorary President of the "Asociación Iberoamericana de Derecho del Trabajo y Seguridad Social" (Buenos Aires, Argentina); Honorary President of the "Academia Nacional do Direito do Trabalho" (Rio de Janeiro) (composed of Brazilian experts in labour law); member of the International Academy of Jurisprudence and Comparative Law (Rio de Janeiro) and the International Academy of Law and Economy (Sao Paulo); honorary member of the Association of Labour Lawyers of Sao Paulo; member of the Order of Barristers of the State of Sao Paulo;

Mr. Benjamin Obi NWABUEZE (Nigeria),
LLD (London); Hon. LLD (University of Nigeria); Senior Advocate of Nigeria; 1980 Laureate of the Nigerian National Merit Award; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member of the Governing Council, Nigerian Institute of International Affairs; Fellow of the Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education; former Minister of Education for Nigeria; former Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993);

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),
Honorary First President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University of Madagascar; former Arbitrator of the ICSID and of the International Civil Aviation Organization; judge of the Administrative Tribunal of the ILO; former member of the International Council for Commercial Arbitration; former member of the International Court of Arbitration of the International Chamber of Commerce; Alternate Chairman of the Staff Committee of Appeals, African Development Bank; member of the United Nations International Law Commission;

Mr. Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain),
Doctor of Law; Permanent State Councillor; Professor of Labour Law; Doctor *honoris causa* of the University of Ferrara (Italy); President Emeritus of the Constitutional Court; President of the Spanish Association of Labour Law and Social Security; member of the European Academy of Labour Law and the Ibero-American Academy of Labour Law; Director of the review *Relaciones laborales*; former President of the National Advisory Commission on Collective Agreements and President of the Andalucian Industrial Relations Council; former Dean of the Faculty of Law of the University of Seville; former Director of the University College of La Radiba;

Mr. Amadou SÔ (Senegal),
Magistrate; Judge of the Constitutional Court of Senegal; former Inspector of Railways of Senegal; former President of the Labour Tribunal of Dakar; former Director of the Judicial Services of Senegal; former President of the Labour Court of the Court of Appeal of Dakar; former Secretary-General of the Supreme Court of Senegal; former President of the 2nd Section (social and administrative affairs) of the Supreme Court of Senegal; founder member of the Senegalese Association of Judicial Studies and Research (ASERJ); founder member of the Senegalese Association of the United Nations (ASNU); member of the International Institute of Law of the French-speaking Countries (IDEF); former Lecturer on labour law at the

Administrative Training and Further Training Centre and the National School of Administration of Senegal;

Mr. Boon Chiang TAN (Singapore),
BBM, PPA, LLB, (London) Dip. Arts; Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former President, Copyright Tribunal; former Chairman, Income Tax Board of Review; former Vice-President (Asia) of the International Society of Labour Law and Social Security;

Mr. Fernando URIBE RESTREPO (Colombia),
Barrister-at-law; former member of the Supreme Court of Justice of Colombia; former President of the Court of Justice of the Cartagena Accord; former President of the Supreme Court of Colombia; former Professor of International Labour Law at the National University of Colombia; former Professor of Labour Law, Universities *Externado de Colombia* and *Pontificia Javeriana*; former Professor of Philosophy of Law at the Bolivariano University of Medellín;

Mr. Jean-Maurice VERDIER (France),
Professor Emeritus at the University of Paris X; Honorary President of the University of Paris X; Honorary Dean of the Faculty of Law and Economics; Director of the Institute for Research on Undertakings and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); former Director of the Institute of Labour Social Sciences, University of Paris I; Vice-President of *Libre Justice*, the French section of the International Commission of Jurists; former Professor at the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; former President and Honorary President of the French Association of Labour and Social Security Law;

Mr. Budislav VUKAS (Croatia),
Professor of Public International Law at the University of Zagreb, Faculty of Law; member of the International Tribunal for the Law of the Sea; associate member of the Institute of International Law; member of the OSCE Court of Conciliation and Arbitration; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources; former member of the Permanent Court of Arbitration;

Sir John WOOD (United Kingdom),
CBE, LLM; FRC Psych(Hon); Barrister; Chairman of the Central Arbitration Committee;

Mr. Toshio YAMAGUCHI (Japan),
Honorary Professor of Law at the University of Tokyo, Professor of Law at Kanagawa University; Chairman of the Central Labour Relations Commission of Japan; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

5. The Committee elected Sir William DOUGLAS to the Chair and it elected Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

6. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;

(ii) the information and reports concerning Conventions and Recommendations, communicated by Members in accordance with article 19 of the Constitution;

(iii) the information and reports on measures taken by Members in accordance with article 35 of the Constitution.

7. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related instruments and their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 95 to 128 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 95 to 128 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 129 to 139 below). Part Three, which is published in a separate volume (Report III (Part 1B)) consists of a General Survey on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978, on which governments were requested to submit reports under article 19 of the Constitution of the ILO.

8. In carrying out its task, which consists of indicating the extent to which the situation in each State appears to be in conformity with the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations.

9. In this context, the Committee again noted the participation of the Chairman of its 66th Session as an observer in the general discussion of the Committee on the Application of Standards of the 83rd Session of the International Labour Conference (June 1996). It noted the decision of the Conference Committee on the Application of Standards again to request the Director-General to invite the Chairman of the 67th Session of the Committee of Experts on the Application of Conventions and Recommendations to attend as an observer the general discussion of the Committee on the Application of Standards of the 85th Session of the International Labour Conference (June 1997). The Committee accepted the invitation.

II. General

Membership of the Organization

10. Since the Committee's last session, the number of member States of the ILO has risen from 173 to 174; Saint Kitts and Nevis became a Member of the Organization on 19 June 1996.

New standards adopted by the Conferences in 1996 and the coming into force of a Convention

11. The Committee noted that at its 83rd Session (June 1996) the International Labour Conference adopted the Home Work Convention (No. 177) and Recommendation (No. 184). At its 84th (Maritime) Session, the International Labour Conference adopted three international labour Conventions, a Protocol and three international labour Recommendations, namely: the Labour Inspection (Seafarers) Convention (No. 178) and Recommendation (No. 185); the Recruitment and Placement of Seafarers Convention (No. 179) and Recommendation (No. 186); the Seafarers' Hours of Work and the Manning of Ships Convention (No. 180) and the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation (No. 187); and the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976.

12. The Prevention of Major Industrial Accidents Convention, 1993 (No. 174), has been ratified by Sweden and Armenia and will come into force on 3 January 1997.

Ratifications and denunciations

13. Since 8 December 1995, 63 ratifications by 29 member States have been registered. The total number of ratifications at 13 December 1996 was 6,355.

14. The total number of denunciations not accompanied by the ratification of a revised Convention was 78 at 13 December 1996.

15. Since the Committee's last session, the Director-General has registered the denunciation of the Night Work (Bakeries) Convention, 1925 (No. 20), by Peru and the denunciation of the Termination of Employment Convention, 1982 (No. 158), by Brazil. The Government of Peru stated that Convention No. 20 was being denounced because it was not applicable in Peru. In that branch of activity (bakeries), night work was extremely influenced by the need to meet the demands of the general public and the lack of sufficiently developed technologies for the automatization of the baking of bread and similar products. The Government stated that its decision was duly preceded by consultations with employers' and workers' organizations. This denunciation, registered on 18 June 1996, will come into effect on 18 June 1997. The Government of Brazil stated that it had taken the decision to denounce Convention No. 158 after holding the pertinent tripartite consultations on the matter. It recalled that it attaches great importance to the protection of employment against arbitrary dismissal or dismissal without cause and that this matter is dealt with by article 7(I) of the Federal Constitution. A Bill to supplement the constitutional provision has been the subject of tripartite discussions. According to the Government, complex circumstances of a legal and economic nature, which could not have been foreseen at the time of ratification, made it difficult for the Brazilian Government to implement Convention No. 158 within the Brazilian legal system. The Government considers that in fact the Convention could, on the one hand, be invoked to justify excessive and indiscriminate dismissals, based on the rather general and vague "operational requirements of the undertaking, establishment or service", as stated in Article 4, or on the other hand, give way to a broad prohibition of dismissals which would not be compatible with the current programme of economic and social reform and modernization. Furthermore, the Government considers that the Convention constituted a step backwards in the course towards less state intervention and more collective bargaining. According to the Government, such uncertainty regarding the scope of the provisions of the Convention would, in the context of the Brazilian legal system, based on positive law, generate insecurity and litigation, without practical advantages for the improvement and modernization of labour relations. The Government nevertheless emphasized that it is sensitive to the issues dealt with in the Convention and has the intention of continuing to apply and improve the national legislation concerning the protection of employment. This denunciation, registered on 20 November 1996, will come into effect on 20 November 1997.

16. The Committee recognizes that implementation of a Convention by a ratifying State often involves a period of adjustment. It refers in this regard to the observation addressed to the Government of Brazil under Convention No. 158 (Part Two of this report, I. Observations on ratified Conventions).

17. Eight denunciations accompanied by the ratification of a revised Convention have been registered by the Director-General since the Committee's last session. The Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), was denounced by Canada, Ireland and Panama following their ratification of the Labour Statistics Convention, 1985 (No. 160). The Holidays with Pay Convention, 1936 (No. 52), was denounced by the Czech Republic following its ratification of the Holidays with Pay Convention (Revised), 1970 (No. 132). The Fee-Charging Employment Agencies Convention, 1933 (No. 34), was denounced by Argentina following its ratification of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). The Minimum Age (Sea) Convention (Revised), 1936 (No. 58), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), and the Minimum Age (Fishermen) Convention, 1959 (No. 112), were denounced by Tunisia following its ratification of the Minimum Age Convention, 1973 (No. 138).

Constitutional and other procedures

18. The Committee was informed of the following decisions taken by the Governing Body in cases involving recourse to the constitutional procedures of complaint and representation and other procedures.

A. Complaint submitted under article 26 of the ILO Constitution

Complaint against Myanmar

19. By a letter dated 20 June 1996, addressed to the Director-General of the ILO, 25 Workers' delegates to the 83rd Session of the International Labour Conference presented a complaint under article 26 of the Constitution against the Government of Myanmar concerning non-observance of the Forced Labour Convention, 1930 (No. 29).

At its 267th Session (November 1996), the Governing Body decided that the Government of Myanmar would be requested by the Director-General to communicate its observations on the complaint by 31 January 1997 at the latest. When so inviting the Government of Myanmar, the Director-General informed it that the Governing Body intended to examine the complaint at its 268th Session, which will take place in Geneva in March 1997.

B. Representations submitted under article 24 of the ILO Constitution

Representation concerning Brazil

20. At its 267th Session (November 1996), the Governing Body decided that the representation made by the Trade Union of Workers of the Construction and Furniture Industries of Santos, alleging non-observance by Brazil of the Termination of Employment Convention, 1982 (No. 158), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representations concerning Congo

21. At its 265th Session (March 1996), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the International Organization of Energy and Mines (OIEM), alleging non-observance by Congo of the Protection of Wages Convention, 1949 (No. 95).

22. At its 265th Session (March 1996), the Governing Body decided that the representation submitted by the Trade Union Confederation of Congo Workers (CSTC), alleging non-observance by Congo of the Protection of Wages Convention, 1949 (No. 95), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Costa Rica

23. At its 266th Session (June 1996), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the Latin American Central of Workers (CLAT), alleging non-observance by Costa Rica of the Employment Policy Convention, 1964 (No. 122).

Representation concerning France

24. At its 265th Session (March 1996), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the World Federation of Trade Unions (WFTU), alleging non-observance by France (French Polynesia) of the Labour Inspection Convention, 1947 (No. 81), and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82).

Representation concerning Greece

25. At its 265th Session (March 1996), the tripartite committee set up to examine the representation made by the Federation of the Associations of Public Servants of the Ministry of Labour of Greece, alleging non-observance by Greece of the Labour Inspection Convention, 1947 (No. 81), requested additional information from the above Federation. The above committee will meet during the 268th Session (March 1997) of the Governing Body.

Representation concerning Guatemala

26. At its 267th Session (November 1996), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and Public Services International (PSI), alleging non-observance by Guatemala of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).

Representations concerning Peru

27. At its 266th Session (June 1996), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the General Confederation of Workers of Peru (CGTP), alleging non-observance by Peru of the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Underground Work (Women) Convention, 1935 (No. 45), and the Social Security (Minimum Standards) Convention, 1952 (No. 102), which was receivable with regard to the first three instruments.

28. At its 267th Session (November 1996), the Governing Body adopted the report of the tripartite committee set up to examine the representations made by the Latin American Central of Workers (CLAT) and the Single Confederation of Workers of Peru (CUT), alleging non-observance by Peru of the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122).

Representation concerning Poland

29. At its 265th Session (March 1996), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the All-Poland Trade Union Alliance (OPZZ) alleging non-observance by Poland of the Employment Policy Convention, 1964 (No. 122).

Representation concerning the Russian Federation

30. At its 265th Session (March 1996), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Seafarers' Union of Russia, alleging non-observance by the Russian Federation of the Seafarers' Identity Documents Convention, 1958 (No. 108).

Representation concerning Senegal

31. At its 265th Session (March 1996), the Governing Body decided that the representation made by the Senegal Teachers' Single and Democratic Trade Union (SUDES), alleging non-observance by Senegal of the Abolition of Forced Labour Convention, 1957 (No. 105), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was receivable only with regard to Convention No. 105. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Turkey

32. At its 265th Session (March 1996), the Governing Body decided that the representation made by the Confederation of Turkish Trade Unions (TÜRK-IS), alleging non-observance by Turkey of the Termination of Employment Convention, 1982

(No. 158), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Uruguay

33. At its 267th Session (November 1996), the Governing Body approved the report of the tripartite committee set up to examine the representation made by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and its affiliated organization, the National Single Trade Union in Construction and Similar Activities (SUNCA), alleging non-observance by Uruguay of the Safety Provisions (Building) Convention, 1937 (No. 62), the Labour Inspection Convention, 1947 (No. 81), the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Health Services Convention, 1985 (No. 161).

Representation concerning Venezuela

34. At its 267th Session (November 1996), the Governing Body decided that the representation made by the Venezuelan Workers' Confederation (CTV), the Single Central Organization of Workers of Venezuela (CUTV), the General Confederation of Workers of Venezuela (CGT), the Confederation of Autonomous Trade Unions (CODESA) and the National Trade Union of Public Employees and Officials of the Judiciary and of the Council of the Magistracy (ONTRAT), alleging non-observance by Venezuela of the Protection of Wages Convention, 1949 (No. 95), and the Termination of Employment Convention, 1982 (No. 158), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning the Socialist Federal Republic of Yugoslavia

35. The Committee noted previously that the tripartite committee established to examine the representation submitted by the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by the Socialist Federal Republic of Yugoslavia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), submitted its report to the 253rd (May-June 1992) Session of the Governing Body. The Governing Body noted that, while awaiting a decision by the United Nations, it was not possible to identify the Government concerned for the application of article 7 of the Standing Orders governing the procedure for the examination of representations submitted under articles 24 and 25 of the ILO Constitution. The Governing Body has still not set a date for the examination of the report.

C. Special procedures concerning freedom of association

36. At each of its last meetings (March, June and November 1996), the Committee on Freedom of Association had before it an average of 100 cases concerning nearly 50 countries from all parts of the world, in which it presented interim or final conclusions, or cases of which the examination has been adjourned pending the arrival of information from governments (300th to 305th Reports). Some of these cases have been before the Committee on two occasions. Moreover, since the last meeting of the Committee of Experts, 46 new cases have been submitted to the Committee on Freedom of Association. A direct contacts mission concerning cases pending before the Committee on Freedom of Association visited Swaziland and Colombia.

37. The Committee on Freedom of Association drew the attention of the Committee of Experts to the legislative aspects of the following cases: 1695 and 1786 (Costa Rica), 1730 (United Kingdom), 1765 (Bulgaria), 1773 (Indonesia), 1791 (Chad), 1810 and 1830 (Turkey), 1844 (Mexico), 1849 (Belarus) and 1850 (Congo).

Functions in regard to other international instruments of universal and regional character

A. United Nations Covenants and Conventions concerning human rights

38. The Office regularly sends information, in accordance with existing arrangements with each one of them, to the various bodies responsible for the application of United Nations Treaties that fall within its competence. These bodies constitute the supervisory machinery established by the United Nations to examine the reports that governments are required to submit on each of the instruments that they have ratified. Since the Committee's last meeting, the following activities have been undertaken:

- *International Covenant on Economic, Social and Cultural Rights*: the Office took part in the 14th (May 1996) and 15th (November-December 1996) Sessions of the Committee on Economic, Social and Cultural Rights and presented reports on five and seven countries respectively;
- *International Covenant on Civil and Political Rights*: reports were presented at the 56th (March-April 1996), 57th (July 1996) and 58th (October-November 1996) Sessions of the Human Rights Committee;
- *Convention on the Elimination of All Forms of Discrimination against Women*: a report and additional information on ILO activities in this field and Governing Body documents on the follow-up by the ILO to the Fourth World Conference on Women (Beijing, 1995) will be presented to the 16th (January-February 1997) Session of the Committee on the Elimination of Discrimination against Women;
- *International Convention on the Elimination of All Forms of Racial Discrimination*: the Office took part in the 48th (March 1996) and 49th (August 1996) Sessions of the Committee on the Elimination of Racial Discrimination.

39. In accordance with Article 45 of the *United Nations Convention on the Rights of the Child*, the ILO was represented at the 11th, 12th and 13th Sessions of the Committee on the Rights of the Child (Geneva, January 1996, May-June 1996 and September-October 1996). At 13 December 1996, only four member States (United Arab Emirates, United States, Oman and Somalia) had not ratified the instrument. The Committee on the Rights of the Child examined reports from the following countries: Croatia, Iceland, Finland, Republic of Korea, Mongolia, Yemen, Federal Republic of Yugoslavia (Serbia and Montenegro) (11th Session); China, Cyprus, Guatemala, Lebanon, Nepal, Zimbabwe (12th Session); and Mauritius, Morocco, Nigeria, United Kingdom (Hong Kong), Uruguay (13th Session). In its recommendations, the above Committee called on States which have not yet done so to examine the possibility of ratifying the Minimum Age Convention, 1973 (No. 138), and other relevant instruments of the ILO. Furthermore, it called on States which it had found to be experiencing difficulties in areas falling within the ILO's competence, to request the assistance of the Office. This information was communicated to the competent departments at headquarters and in the regions.

40. The Office transmitted information and comments on the reports of countries reporting to the pre-sessional working group of the Committee on the Rights of the Child on the measures adopted to give effect to the Convention on the Rights of the Child. In this connection, it is important to recall that there are national bodies made up of representatives of the administrations concerned and of non-governmental organizations, which aim generally to promote the application of the Convention and propose measures to overcome difficulties in implementing it. In some countries, administrations whose remit covers labour, together with employers' and workers' organizations, have been invited to participate in the activities of these bodies. Their involvement can be of considerable significance in pointing the way for measures to abolish labour by children below a certain age and protect young people who work, in accordance with the provisions of international labour Conventions. It can also facilitate a review of policies concerning child labour, an assessment of their effects and, if need be, give them fresh impetus.

B. European Code of Social Security and its Protocol

41. In accordance with the supervisory procedure established under Article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 15 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. It noted that the States Parties to the Code and the Protocol continue in large measure to apply them. At the sitting in which the Committee examined the reports on the European Code of Social Security and its Protocol, the Council of Europe was represented by Mr. M. Remmert, Administrator of the Social Security and Employment Division. The conclusions of the Committee regarding these reports will be sent to the Council of Europe.

42. In addition, a representative of the ILO took part, as technical adviser, in the meeting of the Steering Committee for Social Security of the Council of Europe (Strasbourg, April 1996). As in previous years, the Steering Committee approved the conclusions of the Committee of Experts.

C. European Social Charter and Additional Protocol

43. In accordance with Article 26 of the European Social Charter, a representative of the ILO participated during the course of 1996 in an advisory capacity in several sessions of the Committee of Independent Experts set up to supervise the application of the Charter. The Council of Ministers of the Council of Europe, at its 562nd Session (Strasbourg, 1-4 April 1996), adopted the Revised European Social Charter.

Collaboration with other international organizations

Cooperation in the field of standards with the United Nations and the specialized agencies

44. In the context of the collaboration established with other international organizations on questions concerning the supervision of the application of universal instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations, specialized agencies, and intergovernmental organizations with which the ILO has entered into special arrangements for this purpose.

45. In accordance with established practice, copies of the reports received on the Indigenous and Tribal Populations Convention, 1957 (No. 107), were forwarded for comment to the United Nations, the United Nations Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO); copies of these reports were also sent to the Inter-American Indian Institute of the Organization of American States. The WHO and the United Nations also received a copy of one report on the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Copies of reports on the Rural Workers' Organisations Convention, 1975 (No. 141), were communicated to the FAO and the United Nations. Copies of reports on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), were communicated to the FAO, UNESCO and the United Nations. Copies of reports on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), were forwarded to the WHO, UNESCO and the United Nations. Copies of the reports received on the Nursing Personnel Convention, 1977 (No. 149), were communicated to the WHO. Copies of reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and on the Radiation Protection Convention, 1960 (No. 115), were sent to the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA), respectively.

46. Representatives of these organizations were also invited to attend the sittings of the Committee of Experts at which the Conventions in question were discussed.

Matters relating to human rights

47. Following the ILO's participation in the World Conference on Human Rights (Vienna, June 1993), the World Summit for Social Development (Copenhagen, March 1995), the Fourth World Conference on Women (Beijing, September 1995) and the other international thematic conferences organized recently, the Office has continued to respond in its regular promotional activities to the call in the Vienna Declaration and Plan of Action for the universal ratification of international human rights treaties and to the Copenhagen Programme of Action's call for the ratification and full implementation of ILO Conventions in the areas of the prohibition of forced and child labour, freedom of association, equal remuneration for men and women for work of equal value and non-discrimination in employment. The overall strategic objective of the plan of action in follow-up to the Beijing Conference is to ensure the integration of a gender perspective in all ILO programmes and projects and to promote equality of opportunity and treatment between men and women in the world of work through ILO means of action, including standard-setting and monitoring, technical cooperation, research, advisory services, information dissemination, seminars, workshops, publications and other promotional activities.

48. The Committee has already expressed its appreciation of the Director-General's initiative, as a follow-up to the World Summit for Social Development, to call upon member States which have not yet ratified one or several of the seven ILO Conventions referred to in the Declaration adopted by the Summit, to ratify them. The Committee notes with interest that these seven instruments have been the subject of 20 of the 63 ratifications registered since its last session. The ratifications in question are as follows:

- Convention No. 29, Estonia, Georgia;
- Convention No. 105, Estonia, Georgia, Czech Republic;

- Convention No. 87, Republic of Moldova, South Africa, Zambia;
- Convention No. 98, Georgia, Republic of Moldova, Nepal, South Africa, Suriname, Zambia;
- Convention No. 100, Estonia, Georgia;
- Convention No. 111, Georgia, Republic of Moldova; and
- Convention No. 138, El Salvador, Georgia.

49. In the context of strengthening its technical advisory services on basic rights, the Office has maintained its collaboration with the United Nations, and particularly with the Centre for Human Rights. Workshops on the application of international human rights instruments and joint briefing sessions with other United Nations agencies for country or thematic rapporteurs have been organized by the United Nations with the collaboration of the Office at the International Training Centre in Turin. A workshop was organized for the staff of the United Nations High Commissioner for Refugees to explain the ILO's standards and procedures in areas related to the mandate of the UNHCR. The ILO is also continuing its work on the indigenous segment of the Guatemala Peace Plan, signed in Oslo in 1994; this work is coordinated by the ILO Office in San José.

50. Following the General Assembly's proclamation of 1994-2004 as the International Decade of the World's Indigenous People, the Office has contributed to the Decade by organizing its own events and by collaborating with the United Nations Centre for Human Rights. The Office is providing technical backstopping to a Danish-funded project to promote the rights of indigenous and tribal peoples within the framework of the relevant ILO standards, and particularly Convention No. 169.

51. In the framework of the General Assembly's proclamation of 1995-2005 as United Nations Decade for Human Rights Education, the ILO has cooperated with the Office of the High Commissioner for Human Rights in its activities to promote human rights education methodologies, using, in particular, the ILO's extensive experience in workers' and employers' education and training.

Questions concerning the application of Conventions

Application of the Employment Policy Convention, 1964 (No. 122)

52. The Committee examined the reports of 29 governments on the application of the Convention. In the preparation of its observations and direct requests, it again had the support of the specialist units of the ILO. In addition to the International Standards Department, the Employment and Training Department in particular (and in some cases multidisciplinary teams) provided essential assessments of reports.

53. The Committee has carefully considered the views expressed and conclusions reached at the 83rd Session of the Conference in June 1996. From the *Record of Proceedings* of the Conference Committee on the Application of Standards and the Committee on Employment Policies — and the important ILO *World Employment* report for 1996-97 — it is clear that the goal of full, productive and freely chosen employment embodied in Convention No. 122 remains the basic policy of the Organization and its constituents. It would be failing the trust of the workers to accept anything less as an objective, difficult though it may be to attain.

54. The Committee will continue to pursue the constructive dialogue on employment policy in which it has been engaged with the Conference Committee on the Application of Standards. It believes that the Conference as a whole reinforced the ILO's will not to fail to accept the challenges of the employment and social problems that have arisen from many causes — increased international competitivity, globalization of markets and the transition of some countries to a market economy being examples. Employment policy must be part of an overall strategy, and Convention No. 122 and the accompanying Recommendations Nos. 122 and 169 represent a clear resolve to pursue such a policy.

55. Further, the Committee's discharge of its responsibilities for supervision of the whole range of international labour standards would be, indeed is being jeopardized as working conditions, employment stability and workers' individual dignity and freedom of choice are severely limited by economic pressures. The Committee is particularly concerned that, in the search for "efficiency" and the emphasis on competition, the fair treatment of labour is increasingly likely to suffer. Following the tendency towards fixed-term contracts, there is growth of "no-hours" contracts (which do not specify working hours but require the workers to be available at any time) and this clearly shows that the human aspects of employment are vulnerable to pressing economic concerns.

56. The Committee accepts that ILO standards rightly leave a great deal of discretion to individual States to ensure that conditions conducive to employment generation are established and maintained. The Committee is interested to note that the 85th Session of the Conference in 1997 will focus on the role of small and medium-sized enterprises in employment creation. One part of the role of government, nevertheless, is no doubt to maintain an appropriate legal framework; another is certainly to ensure that the freedom of choice irrespective of race, colour, sex, religion, political opinion, national extraction or social origin referred to in Article 1(2)(c) of the Convention is a reality, so that all workers — including disadvantaged categories such as women — are in fact able to opt for suitable full-time or part-time work when that is what they want. A third part — which of course impacts on the other two — is that described in Article 3 of the Convention: actively to consult representatives of employers and workers and other persons affected and to endeavour in good faith to use their experience and views and obtain support through them. This role is obviously one which calls for deliberate action by government; and the Committee's present General Survey on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978, indicates further how that role can be discharged.

57. The Committee is sensitive too to the need for incisive analysis of the overall economic framework and the effects of fiscal and monetary policies on employment and the operation of the labour market. In several individual comments it refers to the questions on macroeconomic policies included in the report form adopted by the Governing Body, because it is that level of policy-making which is in many respects the most decisive for application of the Convention. It is therefore vital that when those policies are formulated and applied the employment policy goals should be kept in view, so that decisions in this field are not simply taken by default. The Committee hopes that greater efforts can be made in that direction, including in assessing the employment effects of those policies, by industrialized as well as transition and developing countries, and that employers' and workers' organizations will assist by transmitting their own evaluations.

58. While the Committee's individual comments deal with problems in the above areas (and others) for many countries, its feeling in fulfilling its own role of supervising the Convention is by no means a negative one. It has again been conscious of the levels of relatively full employment recorded in at least two countries examined this year (Republic of Korea and United Kingdom (Hong Kong)). It has also been very interested to learn of the assistance given by multidisciplinary teams in cooperation with the Standards Department in response to other countries considering ratifying the Convention. It is very glad to complement the role of the Conference Committee on the Application of Standards and intensify exchanges with that body concerning the application of Convention No. 122. The Committee would actually venture to suggest that the supervisory process might have something to contribute to other activities of the Organization in relation to employment.

59. Both the 83rd Session of the Conference and the *World Employment* report have drawn attention to the various means of seeking to achieve full employment in a global context. The Committee would support the reaffirmation in the Conference's *Conclusions concerning the achievement of full employment in a global context: The responsibility of governments, employers and trade unions* that, although its interpretation may be different for developing countries, full employment as prescribed by Convention No. 122 is a valid objective for all countries. The Committee believes that its supervision of the application of this Convention is an invaluable means of action at the ILO's disposal, which assists in keeping the employment policy aims in the minds of those concerned. Engaging, through established procedures based on the constitutional obligations relating to ratified Conventions, in informed and constructive dialogue with governments, employers' and workers' organizations and the Conference Committee on the Application of Standards, supported by specialist units of the International Labour Office, is attempting to provide a way of raising problems in the quest for good employment policies. To record successes and difficulties of individual countries and their methods of seeking solutions must add to the debate. The Committee would suggest that the Office consider how the supervisory process in regard to Convention No. 122 in particular might be brought more into the mainstream of the Organization's activities in the employment sphere. For instance, the possibility of a link to the country employment policy reviews which the Office is making following the Copenhagen Summit in 1995 could be explored: those reviews should provide information that may increase member States' understanding of how a policy for full, productive and freely chosen employment within the meaning of the Convention can be pursued, while the Committee of Experts' dialogues provide an established means of promoting concrete steps at the national level. The Committee of Experts' comments could also be used more systematically to focus the practical assistance and technical cooperation offered by the Office, and as an indicator of the success of measures adopted and projects executed.

60. Above all, one of the strengths of the article 22 procedure is the integration of opinions of employers' and workers' organizations. The Committee continues to welcome their participation in the debate both through written observations on the application of Convention No. 122 and through their contributions on the discussions of employment policy in the Conference Committee on the Application of Standards.

61. The search for the maximization of productive employment, fairly rewarded, for all who seek it is an endless task. Although the methods of achieving it and the national circumstances change, the underlying aim must surely be constant.

Application of Conventions on social security

62. In its previous report, the Committee has noted the generalization of the process of reform in social security, spurred by the pressing concerns to maintain the financial viability and improve cost-effectiveness of the various branches. The information supplied by the governments this year confirms that this process not only has become more profound, but also that the pace of reforms has quickened. It may be observed generally that, since the beginning of the 1990s, in the majority of countries social security legislation has entered into a period of constant revision and modification. The scope and depth of these reforms are undeniably leading to a fundamental change of the social security systems.

63. Reforms are under way for almost all types of long- and short-term benefits — old-age, invalidity, survivors', sickness, unemployment, and family benefits, as well as medical care — and an increasingly large part of the population is being affected by these changes. The measures taken include: reducing coverage; lengthening periods of contribution, employment, and residency; narrowing the definition of the contingency; reducing the period for which a benefit is payable; reducing the level of benefit; and increasing cost-sharing for medical care.

64. Economic considerations appear also to be the driving force which has led certain governments to seek to reduce their own responsibilities by simultaneously increasing the role of private institutions and transferring some benefit provisions, in particular sickness benefit, to employers. This move to increase privatization has also occurred in relation to pension provisions, as the importance of the public tier is gradually reduced. The Committee observes in this respect that such changes in the structure of social security might in fact go beyond experimenting with new forms of management of social security schemes within the framework of accepted principles. It recalls that the most recent international labour standards concerning social security are drafted in a flexible manner so as to take into account various methods of ensuring protection, they nevertheless lay down certain general principles as regards the organization and management of social security systems. Representatives of the persons protected shall participate in the management of the schemes or be associated with them in all cases where the administration is not entrusted to an institution regulated by the public authorities or a government department. The State must accept general responsibility for the due provision of benefits and for the proper administration of the institutions and services concerned. In addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102) states that social security systems shall be financed collectively by means of insurance contributions or taxation or both, in order that the risks are spread among the members of the community.

65. The Committee is bound to draw the governments' attention to the need to safeguard, in the process of reform, these basic principles of organization and management which should continue to underlie the structure of the social security systems.

66. The ongoing reforms have become, in many countries, the subject of intense political debates and even social confrontations, and their impact on the welfare of the population should not be underestimated. The information on the changes made or to be introduced in the near future supplied by the governments in their reports, as well as many comments received by the International Labour Office from trade unions and other organizations of protected persons concerning difficulties in the application of the relevant ILO social security Conventions, attest to the complexity of the situation. The

Committee considers that changes of such magnitude in the social security systems require a carefully balanced approach based on a clear long-term vision formulated after consultation with all of the major social and political forces in the countries concerned.

67. However, the Committee is led to observe that acute financial pressure and imperatives of short-term savings often induce governments to take hasty measures and to seek uncoordinated cuts in social security expenditures. The Committee recognizes the need to have financially viable social security schemes which maintain a proper balance between the immediate interests of contributors and those of present and future beneficiaries. It wishes to stress that immediate financial considerations, however important, should not take precedence over the need to preserve the stability and effectiveness of the social security system, and that any reductions in social security expenditures should be carried out in the framework of a coherent policy aimed at achieving viable long-term solutions ensuring the required level of social protection. The Committee therefore considers it essential that, prior to introducing any new cost-saving measures, governments give due consideration to their international obligations arising from international labour standards concerning social security.

Application of Conventions on safety and health

68. Several States which have ratified Conventions on occupational safety and health, including those which have done so recently, are revising their national laws and regulations or are beginning to develop such laws and regulations. Some of these States are selecting regional standards as a basis for the revision or formulation of these texts. However, there is a difference between international standards and regional standards in the approach adopted to occupational safety and health problems and the manner in which they are to be addressed. The incorporation of regional standards into national legislation is not always sufficient to meet the requirements of international standards of the ILO. States should therefore be reminded that greater attention should be paid to these standards in the revision or formulation of national laws and regulations. ILO standards contain the necessary guidelines, useful provisions and technical parameters upon which national regulations can be established or further developed.

69. States which have ratified Conventions on occupational safety and health are encountering an increasing number of problems in the application of these instruments. While emphasizing that the existence of national laws and regulations is still fundamental for the application of an international instrument, it should be noted that the existence of sound texts is not in itself sufficient to meet the obligations contained in the Conventions. The application of Conventions on occupational safety and health, as technical and detailed standards, requires a whole series of coordinated measures, all of which are of fundamental importance, including training and the monitoring of workers' and managers' knowledge in this field, the correct use of equipment and individual and collective means of protection, and continued attention to personal safety and the safety of others, which all play a fundamental role. Among these measures, importance has to be accorded to workers' education and information on these issues. In this respect, the participation of workers' representatives in the formulation of legal texts and the evaluation of their application must be encouraged. Inspection visits are a means of supervising the application of these measures and correcting any shortcomings. Advisory bodies in the field of occupational safety and health, composed of employers and workers, must also be established. Governments are invited to promote bodies of this nature. The governments concerned could call upon the technical assistance of the Office for the implementation of the provisions of these Conventions.

70. A growing number of governments which are bound by obligations under occupational safety and health Conventions are providing less information on the effect given to these instruments in practice. The Committee considers that this information (extracts of reports of the inspection services, statistics on the number of workers covered by the laws and regulations, the number and nature of the violations reported, the number, nature and causes of accidents, etc.) is necessary in appraising the manner in which the Convention is applied and therefore requests governments to provide this information on a regular basis.

Application of the Protection of Wages Convention, 1949 (No. 95)

71. The Committee notes with concern the increase in the number of cases of delayed payment of wages, non-payment or partial payment of wages in an growing number of countries in Eastern Europe, Africa and Latin America. The extent of delays varies in length from a few months to four years and adds up to considerable sums which keep growing, making it all the more difficult to settle the amounts due. These practices openly contravene social justice and more precisely the principle of wage protection established under Convention No. 95, particularly, the principle of regular payment of wages for work done or services rendered. Workers' organizations have been making observations on them either under article 23 of the Constitution, which are examined by this Committee, or in the form of representations under article 24 of the Constitution, which are submitted to the Governing Body.

72. Even if these situations have their origin in economic and financial difficulties caused by the transition to a market economy or by the implementation of structural adjustment programmes, their scope and persistence may have been aggravated by the failure of the States concerned to take measures to ensure the respect of laws, which in most countries stipulate adequate protection of workers against the delayed payment, non-payment or partial payment of their wages. Such delays or non-payment entail serious social consequences since they deprive the workers and their families of the resources that they have right to, and also disastrous consequences for the economy and public finances. The Committee appeals to all the States that have ratified the Convention to take all possible measures to ensure its application in practice. It also invites the States that have not yet done so to consider the possibility of ratifying the Convention as well as Convention No. 173 of 1992, which revises Article 11 of Convention No. 95 in ensuring the protection of workers' wages in the case of the employer's insolvency.

73. The Committee considers, in light of the cases which the supervisory bodies of the ILO have so far examined, that the application of the Convention, through the national provisions giving effect to it, should involve three principal steps:

(i) effective assessment of the situation in order to determine the amount and nature of debts due as wages, the number of workers concerned, the number and nature of enterprises concerned in the delay in payment of wages so that causes of the delay can be analysed and remedies instituted;

(ii) appropriate sanctions to punish and prevent infringements. It is not enough to provide for such sanctions in law; they should be strictly enforced against those who take advantage of the economic situation to commit abuses; and

(iii) steps to make good the detriment suffered, including not only the amounts due as wages but also the sums to compensate for the loss caused by the delay in payment. It is useful in this regard to examine the possibilities of submitting the cases to the court in order to make good the detriment suffered.

The Committee hopes that measures will be taken rapidly in this direction so as to put an end to delayed payment or total or partial non-payment of wages, in conformity with the provisions of the Convention.

Application of the Forced Labour Convention, 1930 (No. 29)

74. This year again, the Committee examined several reports covering a broad range of concerns about the application of this Convention. The exploitation and resultant human misery still occurring in many member States in flagrant contravention of this Convention are a matter of the gravest concern. One aspect of significant disquiet to the Committee relates to forced child labour, and particularly the exploitation of children for prostitution and pornography. This form of child labour is increasingly advertised outside the country in which it occurs and is therefore the subject of deliberate and increased exploitation by tourists and visitors from other countries. No longer is such exploitation of children a responsibility only of the country in which it occurs, it is an international responsibility.

75. The Committee again appeals to those member States which have not already taken action, to assist in the eradication of these deplorable practices by taking measures in their own territories, to prevent the involvement of persons within their borders, in particular by ensuring the punishment of those who advertise or promote such activities, whatever the technical method used, in another country or travel there for such activities. Such complementary measures would not of course absolve the member State in which such exploitation of children occurs from itself taking firm action to prevent such practices and to prosecute all persons involved.

Application of Conventions in export processing zones and enterprises

76. In earlier reports between 1981 and 1993, the Committee drew attention to the question of export processing zones and enterprises in relation to the application of ratified Conventions. It noted that these zones were characterized by:

(a) fiscal and financial advantages, special powers conferred on their administrative authority, and certain special labour legislation;

(b) in some cases, the special arrangements being extended not just to the *zones*, but also to individual *enterprises*;

(c) one aim being to create jobs by attracting — often international — investment for labour-intensive manufacturing or processing operations;

(d) the operations being largely industrial, but in some cases involving agriculture or services, the products being intended for export.

77. The Committee has, both in its general comments and in comments on the application of ratified Conventions addressed to individual governments, asked for information to be included in article 22 reports on the implementation of obligations in these zones and enterprises in countries where they exist. This practice has continued and the Committee has been grateful to the governments which have duly supplied such information.

78. The Committee notes with interest the creation in the ILO of a Special Action Programme entitled *Labour and social issues relating to export processing zones*. The Action Programme sets out to promote an understanding of the link between social and labour factors and the development of the zones and to identify and give advice on relevant innovations. The Action Programme draws attention to several features of the zones which raise standards-related questions, such as:

- the need to ensure the protection of basic human rights, especially in the spheres of freedom of association, child labour and the rights of women workers (the latter being very commonly employed in the textiles industries which prevail in many of the zones);
- the need for greater protection of wages and employment security for workers in the zones, including where issues of contract labour and home work arise;
- the need for the labour administration to carry out its normal activities in the zones (as regards, in particular, supervising the application of regulations as to occupational safety and health, other working conditions and the above-mentioned points).

79. The Committee understands that the Action Programme will be examining the experience of several countries in the improvement of working conditions, labour relations and labour administration (including private monitoring of the implementation of rules and regulations affecting labour) and publishing findings during 1997. The Committee looks forward to this with interest, since it seems to promise clarification of the manner in which various ratified Conventions are being applied in the zones and enterprises concerned. It again calls on all the governments of countries where there are such zones and enterprises to include information in their article 22 reports which will enable the Committee to appreciate how the Conventions are effectively being applied. It also calls on employers' and workers' organizations to cooperate by transmitting their own views and experience.

III. Technical assistance in the field of standards

A. Direct contacts

80. No direct contacts mission was organized this year, apart from the two missions to Swaziland and Colombia.

B. Promotional activities

81. Several regional and subregional seminars and symposia on international labour standards have been held: an Asia-Pacific Regional Symposium on Standard-related Topics (March, Indonesia); two national seminars on the promotion of fundamental workers' rights (May, China and Viet Nam); a National Tripartite Seminar on Discrimination and Freedom of Association (September, Mauritius), and a Subregional

Seminar on Freedom of Association (October, Mauritius). Some seminars which were scheduled for the beginning of 1996 had to be cancelled due to budgetary constraints.

82. The annual training course designed to familiarize national labour administration officials with the obligations of member States and ILO procedures relating to Conventions and Recommendations, which was due to be held at the Turin Centre and in Geneva, had to be cancelled due to budgetary constraints.

83. Other activities for the promotion of standards took the form of participation in seminars, workshops, symposia and meetings, and the provision of advisory services, technical assistance and consultations concerning international labour standards for the following countries: Armenia, Azerbaijan, Bangladesh, Belgium, Brazil, Chile, China, Colombia, Côte d'Ivoire, France, Gambia, Georgia, Ghana, Greece, Kazakstan, Kyrgyzstan, Namibia, Netherlands, Poland, Senegal, South Africa, Sweden, Tajikistan, Turkey, Turkmenistan, United States and Viet Nam.

84. Furthermore, the Standards Department published a new edition of the *Digest of decisions and principles of the Freedom of Association Committee* published in French, English and Spanish. A Russian version is under preparation and an Arabic version is planned.

85. More than 2,000 copies of the *Handbook of procedures relating to international labour Conventions and Recommendations*, which was published in 1995, have been distributed in English, French and Spanish since the beginning of the year. In addition, the *Handbook* has been translated and distributed in Arabic, Chinese, German and Russian.

C. Standards and multidisciplinary advisory teams

86. The Committee noted that specialists in international labour standards were present in six of the 14 multidisciplinary teams — those in Bangkok, Dakar, Lima, Port of Spain, San José and Santiago (Chile). The services they provide are assisting the national constituents in fulfilling their standards-related obligations and ensuring all due consultations take place among governments, employers and workers; and contributing to the work of the teams by promoting the integration of standards considerations into the formulation of country objectives and the elaboration and execution of technical cooperation projects and programmes.

87. The International Labour Standards Department has assisted in this process by supplying the necessary technical back-up to the standards specialists, enabling headquarters officials to undertake missions where standards specialists are not available or to deal with particular problems, and systematically contributing to the country objectives papers drafted by the teams or by ILO area offices. This helps to make sure the necessary attention is given to problems in the application of ratified Conventions and to the need to promote other relevant Conventions, particularly those identified as a priority by the Governing Body and including those on fundamental workers' rights. In addition, the department held a one-day workshop for team members and other ILO field staff in Dakar, designed to ensure familiarity with the standard-setting and supervisory procedures and explain their importance to the overall work of the teams.

IV. Role of employers' and workers' organizations

88. At each session, the Committee draws the attention of governments to the role that employers' and workers' organizations are called upon to play in the application of Conventions and Recommendations and to the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes with satisfaction that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the ILO.[1] All governments have indicated the organizations to which they have communicated copies of the information supplied to the ILO on the submission to the competent authorities of the instruments adopted by the Conference and the reports due under article 19 of the Constitution.

89. In accordance with established practice, the ILO sent to the representative organizations of employers and workers a letter concerning the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which the governments were invited to reply in their reports.

Observations made by employers' and workers' organizations

90. Since its last session, the Committee has received 245 observations,[2] 13 of which were communicated by employers' organizations and 232 by workers'

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[1] A request has been addressed directly to Lithuania.

[2] *Argentina*: Association of Workers in the Teaching Sector of the Region of Neuquén (ATEN) on Convention No. 107; Confederation of Educational Workers of the Argentine Republic (CTERA) on Conventions Nos. 87, 95; Coordinating Executive Committee of Workers of Salto Grande on Conventions Nos. 95, 111; General Confederation of Workers (CGT) on Conventions Nos. 222, 53, 98; Union of United Maritime Workers (SOMU) on Conventions Nos. 22, 53, 81, 98, 144, 154; *Bolivia*: Bolivian Central of Workers (COB) on Convention No. 128; Departmental Central of Active and Passive Workers of Cochabamba on Convention No. 128; *Brazil*: National Federation of Dockworkers on Convention No. 137; National Federation of Workers of Postal, Telegraphic and Similar Offices (FENTEC) on Convention No. 158; National Union of Labour Inspectors (SINAIT) on Conventions Nos. 29, 81, 105, 117, 131, 158; Officers' Association of EMATER-Rio on Convention No. 158; Stevedores' National Federation (FNE) on Conventions Nos. 98, 158; Trade Union of Bank Employees of São Paulo on Convention No. 158; Trade Union of Bank Establishments' Employees of the Municipality of Rio de Janeiro on Convention No. 158; Trade Union of Water and Sewage Workers of Bahia (SINDAE) on Conventions Nos. 135, 158; Trade Union of Workers of Metal, Mechanical, and of Electric and Electronic Stuff Industries of the State of Espírito Santo (SINDIMETAL-ES) on Convention No. 158; Union of Chemical Industries Workers of ABC on Convention No. 155; Union of Federal Public Service Workers of the State of Goiás (SINTSEP-GO) on Convention No. 155; Union of Fishermen of Angra dos Reis on Convention No. 155; Union of Petrochemical Industry Workers of Duque de

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Caxias (SINDIQUÍMICA) on Convention No. 158; Union of Technical Assistance and Rural Development Workers of the State of Minas Gerais (SINTER-MG)/Federation of Unions and Associations of Rural Development Workers of Brazil (FASER) on Convention No. 95; Union of Urban Industries Workers of Rio de Janeiro on Convention No. 111; *Colombia*: General Confederation of Democratic Workers (CGTD) on Convention No. 95; National Union of Food Industry Workers (SINALTRAINAL) on Convention No. 26; National Union of National Tourist Board's Workers (SINTRACORTURISMO) on Convention No. 111; *Croatia*: Croatian Association of Unions (HUS) on Convention No. 87; Union of Autonomous Trade Unions of Croatia (SSSH) on Convention No. 87; *Czech Republic*: Czech-Moravian Chamber of Trade Unions (CMKOS) on Convention No. 155; *Denmark*: Association of Owners of Car Ferries on Convention No. 163; Association of Shipmasters on Convention No. 163; Danish Association of Maritime Restaurants on Convention No. 163; Danish Association of Navigators on Convention No. 163; Danish Association of Shipowners on Convention No. 163; Danish Confederation of Professional Associations (AC) on Conventions Nos. 87, 98, 122; Union of Radio Operators on Convention No. 163; Welfare Council of the Merchant Fleet on Convention No. 163; *Dominican Republic*: National Trade Union of Agricultural Workers of Sugar and Similar Plantations (SINATRAPLASI) on Conventions Nos. 29, 87, 95, 98, 105; Trade Union of Cane-Cutters of the Barahona Plantation (SIPICAIBA) on Conventions Nos. 29, 87, 95, 98, 105; Union of Agricultural and Similar Plantations Workers of the Barahone Plantation (SITRAPLASIB) on Conventions Nos. 29, 87, 95, 98, 105; *El Salvador*: Federation of Independent Associations and Trade Unions of El Salvador (FEASIES) on Convention No. 122; *Estonia*: Association of Trade Unions on Convention No. 144; *Fiji*: Fiji Trades Union Congress (FTUC) on Convention No. 98; *Finland*: Aland's Shipowners' Association on Convention No. 16; Central Organization of Finnish Trade Unions (SAK) on Conventions Nos. 62, 100, 129, 139; Confederation of Unions for Academic Professionals in Finland (AKAVA) on Convention No. 100; Finnish Confederation of Salaried Employees (STTK) on Convention Nos. 129, 139; Finish Ship's Officers' Association on Convention No. 163; Union of Construction Workers on Convention No. 139; Union of Finnish Metal Workers on Convention No. 139; *France*: French Democratic Confederation of Labour (CFDT) on Conventions Nos. 29, 62, 81, 87, 100, 118, 138, 139; General Confederation of Labour "Force ouvrière" (CGT-FO) on Conventions Nos. 81, 102; National Federation of Salaried Employees of the Construction and Wood Industry (FNCB) on Convention No. 62; National Union of Dock Work Industries in French Ports (UNIM) on Convention No. 137; *French Southern and Antarctic Territories*: French Democratic Confederation of Labour (CFDT) on Conventions Nos. 8, 9, 16, 22, 23, 53, 58, 69, 73, 74, 87, 92, 98, 108, 111, 133, 134, 146, 147; National Federation of Maritime Trade Unions (FNSM) on Conventions Nos. 8, 9, 15, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 98, 108, 111, 133, 134, 146, 147; *Guatemala*: Trade Unions' Unity of Guatemala (CUSG) on Conventions Nos. 87, 98; *Hungary*: National Federation of Agricultural Producers on Convention No. 144; *India*: Bijli Mazdoor Panchayat on Conventions Nos. 1, 26, 81, 107; Centre of Indian Trade Unions (CITU) on Conventions Nos. 107, 144; Mahabubnagar District Palamoori Contract Labour Union on Conventions Nos. 1, 26, 29; Standing Conference of Public Enterprises (SCOPE) on Convention No. 144; *Islamic Republic of Iran*: International Confederation of Free Trade Unions (ICFTU) on Convention No. 111; *Ireland*: Irish Congress of Trade Unions on Convention No. 29; *Italy*: General Confederation of Industry (CONFINDUSTRIA) on Conventions Nos. 100, 139; General National Union of Retired Policemen from Five Corps on Convention No. 102; Trade Unions' Association of Credit Establishments (ASSECREDITO) on Conventions Nos. 98, 122; *Japan*: Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN) on Conventions Nos. 87, 98; Japanese Trade Union Confederation (RENGO) on Conventions Nos. 29, 87, 100; Tokyo Union of Community Workers on Convention No. 156; *Madagascar*: Staff Union of Air Madagascar on Convention No. 100; *Mexico*: Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN) on Convention No. 96; Authentic Labour Front on Convention No. 169; *Myanmar*: International Confederation of Free Trade Unions (ICFTU) on Convention No. 29; *New*

(...continued)

organizations. It shows again the interest of employers' and workers' organizations in the implementation of ILO standards and reflects the constant efforts made by the supervisory bodies and the Office to give interested organizations complete information on their role in this area.

91. The Committee notes that, of the observations received this year, 180 were transmitted directly to the International Labour Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 65 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

92. The Committee also examined a number of other observations by employers' and workers' organizations, consideration of which had been postponed from the last session because the observations of the organizations or the replies of the governments had arrived just before or just after the session. It has had to postpone the examination of a number of observations to its next session, when they were received too close to or even during the Committee's present session to allow sufficient time for the governments concerned to make comments and for the Committee to consider the matters involved.

[2] (...continued)
Zealand: New Zealand Council of Trade Unions (NZCTU) on Conventions Nos. 17, 32, 42: New Zealand Employers' Federation (NZEF) on Convention No. 42; *Norway*: Federation of Oil Workers' Trade Unions (OFS) on Conventions Nos. 87, 98; Independent Unions' Forum on Conventions Nos. 87, 98; *Pakistan*: New Zealand Council of Trade Unions (NZCTU) on Convention No. 29; Pakistan Railway Employees (PREM) Union on Convention No. 87; *Peru*: Association of Labour Inspectors of the Ministry of Labour and Social Promotion on Convention No. 81; Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao on Conventions Nos. 35, 102; Federation of Workers in the Lighting and Power Industry of Peru on Conventions Nos. 87, 98; National Federation of Employees in Judiciary on Convention No. 100; Trade Union of Civil Construction Workers of Lima and Balmearios on Convention No. 122; Union of Crew Members of Maritime Vessels for the Protection of Workers on Convention No. 71; *Romania*: National Union Block on Convention No. 98; *Russian Federation*: Education International (EI) on Convention No. 95; Education and Science Employees' Union of Russia (ESEUR) on Convention No. 95; Federation of Independent Trade Unions of Russia on Convention No. 95; Medvezhiegorsk District Trade Union of Education Workers on Convention No. 95; Republican Trade Unions of Workers of Education and Science, Health Care and Culture on Convention No. 95; Russian Coal Employees' Union (ROSUGLEPROF) on Convention No. 95; Segezha District Trade Unions of Health Care and Education Workers on Convention No. 95; Trade Unions Association of the Republic of Karelia on Convention No. 95; Trade Unions Federation of the Primorsky Kraï on Convention No. 95; *Spain*: General Union of Workers (UGT) on Conventions Nos. 44, 100, 102, 122, 158; Trade Union Federation of Workers' Commissions (CC.OO.) on Conventions Nos. 87, 100, 122, 158; Workers' Union (USO) — Regional Union of Asturias on Conventions Nos. 30, 81, 122; *Sudan*: World Confederation of Labour (WCL) on Convention No. 29; *Sweden*: Federation of Swedish County Councils on Convention No. 100; Swedish Confederation of Professional Employees (TCO) on Conventions Nos. 98, 154; Swedish Employers' Confederation (SAF) on Convention No. 100, 122, 152, 158; *Turkey*: Confederation of Turkish Trade Unions (TÜRK-IS) on Conventions Nos. 58, 94, 98; *Ukraine*; Central Committee of Ukrainian Trade Union of Education and Science Employees on Conventions Nos. 52, 95; Federation of Trade Unions of Ukraine (FTUU) on Convention No. 98; Trade Union of the National Ukrainian Academy of Sciences on Conventions Nos. 52, 95; Ukrainian Maritime Transport Workers Trade Union on Convention No. 73; Union of Health Care Workers of Ukraine on Conventions Nos. 52, 95; World Federation of Trade Unions (WFTU) on Convention No. 95; *United Kingdom*: Career Teachers' Organisation on Convention No. 98; Trades Union Congress (TUC) on Conventions Nos. 29, 87, 98, 100, 102, 122, 147.

93. The Committee notes that in most cases the organizations of employers and workers endeavoured to gather and present elements of law and precise facts on the application in practice of ratified Conventions. It notes that the matters dealt with in these observations have touched on a very wide range of Conventions relating, in particular, to the following subjects: protection of the right to organize and the right to collective bargaining, wage payment, discrimination, forced labour, minimum wage fixing, occupational safety and health, employment policy, labour inspection, tripartite consultations relating to international labour standards, maritime labour. The second part of this report contains most of the comments made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to the governments.

94. The Committee notes lastly that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has now received 78 ratifications. Thus, the number of ratifications has more than doubled since the General Survey on the Convention in 1982, which noted favourable prospects in this respect. [3] The Committee hopes that many other countries will be able to ratify it, all the more since some have recently adopted provisions to establish tripartite bodies for ILO activities, with reference to the 1976 instruments.

V. Reports on ratified Conventions
(articles 22 and 35 of the Constitution)

Supply of reports

95. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions which have been ratified by member States or which have been declared applicable to non-metropolitan territories.

96. In accordance with the decision to rearrange the regular supervisory procedures, adopted by the Governing Body at its 258th Session (November 1993), reports were requested this year on 32 ratified Conventions. [4] These reports cover the period ending 1 June 1996. Furthermore, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria approved by the Governing Body concerning the obligation to send reports more frequently. [5]

97. The new arrangements governing the regular supervisory procedures have now taken effect. These new arrangements are described in detail in the *Handbook of procedures relating to international labour Conventions and Recommendations*, which indicates the provisions concerning the procedures to be followed and established practice with regard to the obligations relating to international labour standards.

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[3] International Labour Conference, 68th Session, Geneva, 1982, Report III (Part 4(B)), para. 202.

[4] Conventions Nos. 10, 13, 16, 19, 20, 21, 28, 29, 32, 33, 53, 60, 62, 69, 73, 74, 87, 100, 102, 113, 118, 122, 123, 125, 128, 129, 134, 138, 139, 145, 152, 157.

[5] GB.258/LILS/6/1 (November 1993), para. 12(c).

98. In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom concerning Hong Kong, the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, as from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, inter alia in the enactment of labour legislation and the administration of labour affairs. The Committee has noted the Declaration of the Government of the People's Republic of China[6] to the effect that, for the purpose of enabling the Hong Kong Special Administrative Region to continue to have international labour Conventions applied to it, "the relevant articles of the International Labour Organization Constitution will be applied, by analogy, to the Hong Kong Special Administrative Region". Accordingly, the Committee will examine at its 69th Session (1998) the reports due on Conventions which apply to the Hong Kong Special Administrative Region.

Reports requested and received

99. A total of 1,806 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,145 of these reports had been received by the Office. This figure corresponds to 63.3 per cent of the reports requested, compared with 65.8 per cent last year. The Committee regrets that, as indicated in paragraph 113 below, a number of reports received are incomplete and do not enable it to reach conclusions regarding the application of the Conventions concerned. A table showing reports received and not received, classified by country and by Convention, is to be found in Part II (section I, Appendix I). Another table (section I, Appendix II) shows, for each year in which the Committee has met since 1933, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee, and by the date of the session of the International Labour Conference.

100. In addition, 338 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (articles 22 and 35 of the Constitution). Of these, 253 reports, 74.8 per cent, had been received by the end of the Committee's session, in comparison with 31.1 per cent in November-December 1995. A list of the reports received and not received, classified by territory and by Convention, is to be found appended to section II of Part Two of this report.

101. In those cases in which the reports were not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination, and where this material was not otherwise available, the Office, as requested by the Committee, wrote to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

Compliance with reporting obligations

102. Most of the governments from which reports were due on the application of ratified Conventions have supplied all or most of the reports requested, as can be seen from Appendix I, Part II, section I. However, 48 governments have not complied with their obligation to supply reports on ratified Conventions. Thus, all or the majority of the reports due this year have not been received from the following countries: Algeria, Angola, Barbados, Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Cyprus, Czech Republic, Djibouti, France (French Polynesia), Grenada, Guinea, Guinea Bissau, Haiti, Islamic Republic of Iran, Iraq, Jamaica, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Morocco, Myanmar, Netherlands (Netherlands Antilles), Rwanda, Senegal, Sri Lanka, United Republic of Tanzania, Tunisia, Uzbekistan, Yemen. No reports have been received for the past two or more years from the following countries: Armenia, Bolivia, Bosnia and Herzegovina, Burundi, Equatorial Guinea, Liberia, Netherlands (Aruba), Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia.

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[6] Official Bulletin, Vol. LXXIII, Series A, p. 26.

103. The Committee urges the governments of these countries, and also of those which have sent only some of the reports due, to make every effort to supply the reports requested on ratified Conventions. Where no reports have been sent for a number of years, it is likely that particular problems of an administrative or technical nature are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it may be that in cases of this kind assistance from the Office, in particular with the help of members of multidisciplinary advisory teams who are specialists on international labour standards, could enable the government to overcome its difficulties.

Late reports

104. The Committee is once again bound to emphasize the importance of communicating reports in due time. This year, for the second time, the reports due on ratified Conventions were to be sent to the Office between 1 June and 1 September 1996. Due consideration is given, when fixing this date, to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation, etc. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

105. The Committee observes that the great majority of reports are received between the time-limit fixed and the date on which the Committee meets: by 1 September 1996, the proportion of reports received was only 20.5 per cent. This is much lower than for its previous session (38.2 per cent), and the Committee is still concerned, since it notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has thus had to examine a number of reports at its present session held over from its previous session.

106. The Committee wishes to draw attention to the problem of the timing of transmission by governments of their reports. This year, only a small percentage of reports due were received by the requested date. The Committee notes that under the new calendar for the reporting cycle implemented as a result of the decisions taken by the Governing Body in November 1993 the figure has not improved. The majority of reports received from governments continued this time to arrive in the last three months before the Committee's meeting or even during it. This obviously places a huge strain on the supervisory process and effectively makes it impossible for particular cases to be dealt with adequately or at all.

107. The Committee has noted with interest the efforts made by the Office — particularly through the standards specialists present in several of the multidisciplinary teams — to assist in ensuring the fulfilment of reporting obligations. It proposes to consider this question again in the light of the experience of the next few years. In the meantime, it appeals to all governments to examine the means by which their labour administrations can best take advantage of the new reporting arrangements and make sure the obligations are fulfilled. It refers in this context to Chapter II, Part VI, of its General Survey on the Labour Administration Convention and Recommendation, as regards the role of the labour administration in relation to international labour affairs. It hopes also that national employers' and workers' organizations will do their best in this respect.

108. Furthermore, the Committee notes that a number of countries sent the reports due on ratified Conventions during the period between the end of the Committee's work and the beginning of the International Labour Conference, or even during the Conference.[7] The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome.

Supply of first reports

109. A total of 64 of the 136 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following States: since 1992 — Liberia (Convention No. 133); since 1993 — Yemen (Convention No. 159); since 1994 — Latvia (Conventions Nos. 111, 122, 135 and 151), Sao Tome and Principe (Conventions Nos. 87, 98, 106, 144 and 159); and since 1995 — Algeria (Convention No. 144), Armenia (Convention No. 111), Burundi (Conventions Nos. 87, 100 and 111), Kyrgyzstan (Conventions Nos. 133 and 160), Lithuania (Convention No. 11), Republic of Moldova (Convention No. 105), Nigeria (Convention No. 144), Philippines (Convention No. 19), Seychelles (Convention No. 149), Tajikistan (Convention No. 160).

110. First reports have particular importance since it is the basis on which the Committee makes its initial assessment of the observance of ratified Conventions. The Committee therefore requests the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

111. Governments are requested to reply in their reports to the observations and direct requests of the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 35 governments to which such letters were sent, only seven have provided the information requested.

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[7] For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, IC and IIB.

112. The Committee notes that there are still many cases of failure to reply to its comments; either:

(a) out of all the reports requested from governments, no report or reply has been received; or

(b) the reports received contained no reply to most of the Committee's comments (observations and/or direct requests) and/or did not reply to the letters sent by the Office.

113. In all there were 323 such cases,[8] as compared to 337 last year (March 1995)[9]. The Committee observes that the number of these cases is still very high. It is bound to repeat the observations or direct requests already made on the Conventions in question.

114. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference

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[8] *Algeria* (Conventions Nos. 13, 19, 62, 87, 98, 100, 122, 138); *Barbados* (Conventions Nos. 29, 87, 102, 118, 122, 128); *Benin* (Conventions Nos. 13, 29, 87, 100); *Bolivia* (Conventions Nos. 5, 14, 20, 77, 81, 98, 100, 102, 105, 106, 111, 118, 122, 123, 128, 129, 160); *Burkina Faso* (Conventions Nos. 33, 100, 129); *Burundi* (Conventions Nos. 11, 19, 29, 81, 94, 105); *Cameroon* (Conventions Nos. 13, 29, 81, 87, 94, 98, 100, 122, 131, 132, 162); *Central African Republic* (Conventions Nos. 13, 19, 33, 87, 100, 117, 118); *Comoros* (Conventions Nos. 19, 29, 81, 98, 100, 105, 122); *Cyprus* (Conventions Nos. 87, 102, 122, 123); *Czech Republic* (Conventions Nos. 100, 111); *Denmark: Greenland* (Convention No. 122); *Djibouti* (Conventions Nos. 13, 16, 19, 24, 53, 55, 69, 73, 81, 87, 88, 94, 95, 100, 106, 115, 120, 122, 125); *Equatorial Guinea* (Conventions Nos. 100, 138); *Estonia* (Conventions Nos. 22, 23); *France: French Polynesia* (Conventions Nos. 10, 13, 19, 33, 44, 53, 69, 100, 122, 123, 129, 144); *Grenada* (Convention No. 81); *Guinea* (Conventions Nos. 29, 62, 87, 100, 118, 122, 134, 139, 152); *Guinea-Bissau* (Conventions Nos. 19, 29, 74, 91, 100, 108); *Islamic Republic of Iran* (Conventions Nos. 19, 100, 122); *Iraq* (Conventions Nos. 13, 19, 29, 100, 118, 122, 132, 138, 139, 152); *Jamaica* (Conventions Nos. 29, 87, 100, 117, 122); *Kyrgyzstan* (Conventions Nos. 98, 100); *Lao People's Democratic Republic* (Convention No. 29); *Latvia* (Conventions Nos. 87, 98, 100); *Liberia* (Conventions Nos. 22, 29, 53, 58, 87, 98, 105, 111, 112, 113, 114); *Libyan Arab Jamahiriya* (Conventions Nos. 52, 53, 81, 100, 102, 111, 118, 121, 122, 128, 130, 138); *Luxembourg* (Conventions Nos. 13, 102, 138); *Malawi* (Conventions Nos. 19, 100, 129); *Morocco* (Conventions Nos. 100, 122); *Mozambique* (Convention No. 100); *Myanmar* (Conventions Nos. 17, 52, 87); *Netherlands: Aruba* (Conventions Nos. 14, 17, 69, 74, 81, 87, 94, 95, 101, 105, 106, 122, 129, 131, 137, 138, 144, 145, 146); *Netherlands Antilles* (Conventions Nos. 33, 69, 74, 87, 106, 122); *Paraguay* (Conventions Nos. 26, 29, 87, 100, 122); *Rwanda* (Conventions Nos. 12, 87, 98, 100, 118, 123, 135, 138); *Saint Lucia* (Conventions Nos. 5, 17, 19, 87, 94, 95, 97, 98, 100, 111); *Sao Tome and Principe* (Conventions Nos. 17, 18, 19, 88, 100, 111); *Senegal* (Conventions Nos. 13, 19, 29, 87, 100, 102, 125); *Seychelles* (Conventions Nos. 8, 16, 87, 105); *Sierra Leone* (Conventions Nos. 29, 88, 95, 98, 100, 101, 111, 125, 144); *Solomon Islands* (Conventions Nos. 8, 14, 16, 26, 29, 81, 95); *Somalia* (Convention No. 111); *Sri Lanka* (Conventions Nos. 10, 29, 135); *Swaziland* (Conventions Nos. 29, 87, 100); *United Republic of Tanzania* (Conventions Nos. 29, 88, 94, 134); *Tunisia* (Conventions Nos. 73, 87, 100, 113, 114, 118, 122, 142); *Yemen* (Conventions Nos. 19, 87, 100, 111, 132, 135, 156).

[9] The cases recorded at the Committee's 66th Session (November-December 1995) cannot be taken into account, as the reports requested concerned only five Conventions.

Committee, and the Committee of Experts cannot overemphasize the special importance of ensuring the dispatch of the reports and replies to its comments on time.

Examination of reports

115. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, the Committee has follows its usual practice of assigning to each of its members the initial responsibility for a group of Conventions. Reports received early enough are sent to the members concerned in advance of the Committee's session. The members submit their preliminary conclusions on the instruments for which they are responsible to all their colleagues for their examination. These conclusions are then presented to the Committee in plenary sitting by their respective authors for discussion and approval. Decisions on comments are adopted by consensus, without prejudice to experts who wish to put forward different opinions, as was the case in the past.

Observations and direct requests

116. In many cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the Report of the Committee, or "direct requests", which are not published in the report, but are communicated directly to the governments concerned. [10]

117. As in the past, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the Government to supply a detailed report earlier than would otherwise have been the case. Under the system of spacing out reports, which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the Government to supply full particulars to the Conference at its next session in June 1997.

118. The observations of the Committee appear in Part Two (sections I and II) of this report, together with a list under each Convention of any direct requests. An index of all observations and direct requests, classified by country, is provided at the beginning of this report.

Cases of progress

119. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to express its satisfaction at certain measures taken by governments to make the necessary changes in their country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 25 instances in which measures of this kind have been taken in 21 countries. The full list is as follows:

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[10] *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, 1995, para. 54(k).

Cases of progress	*Conventions Nos.*
Albania	87
Australia	87
Bulgaria	29
Chad	87
Costa Rica	1
Côte d'Ivoire	100
Cyprus	100
Israel	100
Honduras	29
Mauritius	32
Namibia	87
Niger	87, 100
Peru	67
Portugal	19
Romania	81
Slovakia	87
Sweden	138
Switzerland	102, 128
Tunisia	29
Uganda	105
Zambia	105
Non-metropolitan territories	
United Kingdom	
Isle of Man	87
Hong Kong	98

120. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following its comments has risen to 2,132 since the Committee began listing them in its reports in 1964. In addition, there have been many cases in which the Committee has been able to note with interest various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

121. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee has again noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

Practical application

122. As in previous years, the Committee has been concerned with assessing, on the basis of the information available, the extent to which national legislation giving effect to ratified Conventions is applied in practice. A number of questions designed to elicit information on this point are included in the report forms approved by the Governing Body for the Conventions, and the replies of governments to these questions constitute an appreciable, though uneven, source of information on practical application available to the Committee. The Committee has also taken into account other authoritative sources of information. These consist, in particular, of reports from other international or regional organizations, of the annual reports of labour inspection services, statistical yearbooks published in the States or by the ILO, observations of employers' or workers' organizations, compilations of judicial or administrative decisions, reports on direct contacts, reports on technical cooperation projects and missions, and other official publications such as manuals, studies and economic and social development plans.

123. The Committee notes with interest that this year some 70.4 per cent of the reports supplied on Conventions for which information on practical application was specifically requested contained such data. Although this percentage is fairly high in comparison with recent years, the Committee reiterates its appeal to governments to make every effort to include the information requested in their reports.

124. The following countries have provided information on practical application in more than half the reports concerned: Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Cambodia, Canada, Croatia, Cyprus, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Iceland, Israel, Japan, Jordan, Kuwait, Latvia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, Uruguay.

125. The Committee wishes particularly to thank governments that have given information on practical application in their reports, as this information has greatly helped it in assessing more accurately the extent to which ratified Conventions are actually applied in these countries.

126. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that, again this year, the majority of the countries in question are developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office, particularly when provided by the multidisciplinary advisory teams, could assist in overcoming the difficulties in question.

127. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 27 reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

128. For many years, the Committee has been noting that provisions concerning sanctions to secure observance of the measures in pursuance of Conventions to ensure their application are often inadequate because the sanctions laid down do not have a sufficiently dissuasive effect, particularly where violations of basic workers' rights are concerned, which should, in appropriate cases, be followed by measures of adequate compensation. It once again draws attention to the importance of establishing effective sanctions and of adapting monetary penalties, particularly in countries with high rates of inflation, in such a way that they exert an effective preventive influence against acts contrary to the guarantees laid down by international labour Conventions. The Committee again requests governments to indicate in their reports the measures taken to examine the need to adapt monetary penalties from time to time in the light of inflation or to determine the amount of such penalties in such a way as to take account of currency fluctuations.

VI. Submission of Conventions and Recommendations to the competent authorities

(article 19, paragraphs 5, 6 and 7, of the Constitution)

129. In accordance with its terms of reference, the Committee this year examined the following information[11] supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organization:

(a) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months, as provided for in the Constitution, the following instruments adopted at the 82nd Session of the Conference (1995): the Safety and Health in Mines Convention (No. 176) and Recommendation (No. 183), 1995;

(b) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st (1948) to its 81st (1994) Sessions (Conventions Nos. 87 to 175 and Recommendations Nos. 83 to 183);

(c) replies to the observations and direct requests made by the Committee at its Session in November-December 1995.

82nd Session

130. The Committee notes with interest that the governments of the following member States have indicated that they have submitted to the authorities considered by them to be competent the instruments adopted by the Conference at its 82nd Session: Algeria, Australia, Azerbaijan, Bahamas, Bahrain, Botswana, Canada, Côte d'Ivoire, Cuba, Denmark, Egypt, Ethiopia, Germany, Greece, Iceland, Iraq, Japan, Jordan, Republic of Korea, Lebanon, Luxembourg, Malta, Myanmar, Namibia, Nicaragua, Nigeria, Norway, New Zealand, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Singapore, Slovenia, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States and Viet Nam.

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[11] ILC: *Summary of information on the submission to the competent authorities of Conventions and Recommendations adopted by the International Labour Conference*, Report III (Part 3), 83rd Session, Geneva, 1996.

31st to 81st Sessions

131. The Committee notes with interest that considerable efforts have been made by several governments to submit instruments adopted by the Conference since its 31st Session to the competent authorities, particularly in the following cases: Chad (75th, 76th, 77th, 78th and 79th Sessions); Guyana (74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions); Jordan (79th, 80th, 81st and 82nd Sessions); Lebanon (78th, 79th, 80th, 81st and 82nd Sessions); Mauritius (60th (Conventions Nos. 141 and 142 and Recommendations Nos. 149 and 150), 70th, 78th, 79th, 80th and 81st Sessions); Mongolia (78th, 79th, 80th and 81st Sessions); Suriname (65th (Recommendations Nos. 160 and 161), 67th (Convention No. 154 and Recommendations Nos. 163, 164 and 165), 68th (Convention No. 158 and Recommendation No. 166), 71st (Convention No. 160 and Recommendation No. 170), 72nd, 79th and 80th Sessions).

132. The table in Appendix I to section III of Part Two of the report of the Committee shows the position of each member State as it emerges from the information supplied by the governments, with regard to the discharge of the obligation to submit Conventions and Recommendations adopted by the Conference to the competent authorities. Appendix II shows the overall position in this respect for the instruments adopted from the 31st to the 82nd Sessions of the Conference.

General aspects

133. The Committee notes with concern that many countries are late — sometimes very late — in submitting to the competent authorities the instruments adopted by the Conference. In other cases, submission does not appear to have been accompanied by proposals on the action to be taken concerning the instruments being considered.

134. The Committee wishes to emphasize that the submission to the competent authorities of the instruments adopted by the Conference is a fundamental obligation which constitutes the indispensable first step in implementing international labour standards. In order that national authorities may be kept up to date on the standards adopted at the international level, which may require action in each State so as to give effect to them at the national level, submission should be made as early as possible and in any case within the time-limits set by article 19 of the ILO Constitution. Governments, however, remain entirely free to propose any action which they may judge appropriate in respect of Conventions and Recommendations. The principal aim of the submission is to encourage a rapid and responsible decision by each member State on the Conventions and Recommendations adopted by the Conference.

Comments of the Committee and replies from governments

135. In section III of Part Two of this report, the Committee makes individual observations on the points that it considers should be brought to the special attention of governments. In eight of these observations (Algeria, Bahrain, El Salvador, Jamaica, Lesotho, Nepal, Thailand and Trinidad and Tobago), the Committee has expressed satisfaction at the measures taken to submit instruments to the competent authorities. In addition, requests with a view to obtaining supplementary information on other points have been addressed directly to a number of countries, which are listed at the end of section III.

136. The Committee once again regrets to note that a number of governments have again failed to provide replies to its comments, even after reminders have been sent by the Office in accordance with the request made to it by the Committee (see Part Two, section III of this report). The Committee again expresses the hope that governments will endeavour in future to supply all the required information and documents.

137. The Committee wishes once more to point out the importance of the communication by governments of the information and documents called for in points I and II of the questionnaire in the Memorandum adopted by the Governing Body. Some governments do not communicate the information and documents in question. The Committee trusts that the governments concerned will take suitable measures to comply with the Memorandum on submission to the competent authorities.

Special problems

138. The Committee is bound to note with regret that no information has been supplied by the following 22 governments showing that the Conventions and Recommendations adopted by the Conference during at least the last seven sessions (from the 75th to the 81st Sessions)[12] have in fact been submitted to the competent authorities: Antigua and Barbuda, Cameroon, Central African Republic, Congo, Djibouti, Ecuador, Guatemala, Guinea, Haiti, Hungary, Libyan Arab Jamahiriya, Madagascar, Papua New Guinea, Paraguay, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Syrian Arab Republic, United Republic of Tanzania, Yemen, Zaire. The fact that so many countries have accumulated a long backlog in this context is a cause of deep concern to the Committee. Indeed, there is a danger that certain countries may find it very difficult to bring themselves up to date. What is more, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as the Conference adopts them, which defeats the real purpose of the obligation to submit explained in paragraph 134 above.

139. In this context, the Committee would like to point out once again that the obligation of submission does not imply that governments must ratify the Conventions or accept the Recommendations in question. Taking into account the explanations given by some States in their reports, the nature and scope of the obligation to submit are indicated in individual observations addressed to these States. The Committee expresses the firm hope that the governments concerned will promptly undertake to submit the instruments adopted at the sessions indicated and that it will be able to note the progress made in this respect in its next report. The Committee finally recalls that governments have the possibility of asking the International Labour Office for the technical assistance which it is able to provide, particularly through the multidisciplinary advisory teams, to endeavour to solve this type of problem.

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[12] The Conference did not adopt any Convention or Recommendation at its 73rd Session (June 1987).

VII. Instruments chosen for reports under article 19 of the Constitution

140. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19, paragraphs 5 and 7, of the ILO Constitution on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978.

141. A total of 307 reports were requested and 168 received.[13] This represents 54.7 per cent of the reports requested.

142. More particularly, the Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from: Afghanistan, Djibouti, Guatemala, Haiti, Jamaica, Lesotho, Liberia, Libyan Arab Jamahiriya, Mauritania, Nepal, Nigeria, Papua New Guinea, Paraguay, Saint Lucia, Solomon Islands, Somalia, Trinidad and Tobago, Yemen.

143. The Committee can only urge governments once again to provide the reports requested so that its General Surveys can be as comprehensive as possible.

General Survey

144. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey of the Committee on questions covered by Convention No. 150 and Recommendation No. 158. In accordance with the practice followed in previous years, the Survey has been prepared on the basis of a preliminary examination by a working party comprising four persons appointed by the Committee from among its members.

* * *

145. Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the ILO, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly complex task in a limited period of time.

Geneva, 13 December 1996. *(Signed)* Sir William Douglas,
Chairman.

E. Razafindralambo,
Reporter.

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[13] ILO: Report III (Part 1B), ILC, 85th Session, 1997.

PART TWO

Observations concerning particular countries

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

I. Observations concerning annual reports on ratified Conventions (article 22 of the Constitution)

A. General observations

Algeria

The Committee notes with regret that the first report due since 1995 on Convention No. 144 has not been received. It trusts that the Government will not fail in future to discharge its obligation to provide the report due on the application of this Convention.

Armenia

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first report due since 1995 on Convention No. 111, has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Bolivia

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Bosnia and Herzegovina

The Committee notes with regret, that for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Burundi

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first reports due since 1995 on Conventions Nos. 87, 100 and 111 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Equatorial Guinea

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Kyrgyzstan

The Committee notes with regret that the first reports due since 1995 on Conventions Nos. 133 and 160 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Latvia

The Committee notes with regret that the first reports due since 1994 on Conventions Nos. 111, 122, 135 and 151 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Liberia

The Committee notes that the reports due have not been received. It hopes that it will be possible to take appropriate measures for the application of all ratified Conventions as soon as circumstances permit.

Lithuania

The Committee notes with regret that the first report due since 1995 on Convention No. 11 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Republic of Moldova

The Committee notes with regret that, for the second year in succession, the first report due since 1995 on Convention No. 105 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Nigeria

The Committee notes with regret that the first report due since 1995 on Convention No. 144 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Philippines

The Committee notes with regret that the first report due since 1995 on Convention No. 19 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Saint Lucia

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Sao Tome and Principe

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first reports due since 1994 on Conventions Nos. 87, 98, 106, 144 and 159 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Seychelles

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first report due since 1995 on Convention No. 149 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Sierra Leone

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Solomon Islands

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Somalia

The Committee notes that the reports due have not been received. It hopes that it will be possible to take appropriate measures for the application of ratified Conventions as soon as circumstances permit.

Tajikistan

The Committee notes with regret that the first report due since 1995 on Convention No. 160 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention.

Venezuela

With reference to its previous comments that it has been making for a number of years, the Committee notes, from the information provided by the Government in its last reports on Conventions Nos. 102, 121, 128 and 130, that the national authorities concerned continue to face problems in the implementation of the said instruments. In addition, they appear to encounter technical difficulties in compiling statistical information concerning the calculation of benefits in the form required in the report forms on these Conventions. The Committee observes that, in the absence of such information, it is unable to ascertain whether the amount of the various benefits attains the level prescribed by these instruments for a standard beneficiary. In this situation, the Committee would like to draw the Government's attention to the possibility to avail itself of the technical assistance of the Office in order to seek the early solution of all the problems involved. The Committee refers also to the specific comments it is making under Conventions Nos. 102, 121, 128 and 130.

[The Government is asked to report in detail in 1998.]

Yemen

The Committee notes with regret that, for the fourth year in succession, the first report due on Convention No. 159 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Yugoslavia

In the light of the decisions adopted by the competent bodies of the United Nations considering that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically ensure the continuity of membership of the former Federal Socialist Republic of Yugoslavia, as well as the inferences drawn from this by the ILO Governing Body, the Committee considers it preferable, in order not to prejudge this question, not to proceed to examine the application of the Conventions ratified by the former Federal Socialist Republic of Yugoslavia.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Angola, Barbados, Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Cyprus, Czech Republic, Djibouti, Grenada, Guinea, Guinea-Bissau, Haiti, Islamic Republic of Iran, Iraq, Jamaica, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi,***

Morocco, Myanmar, Rwanda, Senegal, Sri Lanka, United Republic of Tanzania, Tunisia, Uzbekistan, Yemen.

B. Individual observations

Convention No. 1: Hours of Work (Industry), 1919

Costa Rica (ratification: 1982)

The Committee notes the information supplied by the Government in reply to its previous observation. It notes with satisfaction the adoption, on 5 March 1996, of the law repealing section 146 of the Labour Code which was the reason why the courts constantly refused to recognize, in the transport sector, the limits to the working day laid down in the Constitution and, consequently, payment of overtime in this sector.

Furthermore, referring to the comments it has been making for several years, the Committee notes, once again, that the Government does not supply any new information on the application of *Articles 2(b) and 6, paragraph 1, of the Convention*. It recalls that, even though ratification of the Convention implies that the latter shall prevail, according to the national constitution, it is nevertheless necessary to lay down specific provisions on the following matters.

1. *Article 2(b) of the Convention.* The second paragraph of section 136 of the Labour Code supplements the principle contained in the Constitution in the following manner: ***Nevertheless, in work which is not inherently unhealthy or dangerous, a normal working day of up to ten hours and a mixed working day of up to eight hours may be determined, provided that weekly working hours do not exceed 48.*** The Committee notes that under the terms of the above-mentioned provision of the Convention, the additional hours authorized shall in no case be more than one hour a day. It requests the Government to indicate how compliance with this provision is ensured in practice.

2. *Article 6, paragraph 1.* In previous comments, the Committee referred to section 140 of the Labour Code, which provides that normal working hours, plus overtime hours, must not exceed 12 hours per day. The Committee recalls that the exceptions authorized to the above provision of the Convention must remain within reasonable limits, and that regulations on this matter must be adopted by the public authorities. Permitting four hours overtime per day, without any other guarantee, such as a monthly or yearly limit, does not therefore appear to be in conformity with the Convention. The Committee therefore expresses the hope that the Government will supply in its next report information on the measures taken to ensure proper application of this paragraph.

India (ratification: 1921)

1. Further to its direct request of 1994, the Committee reminds the Government that it has not yet commented on the allegations of non-observance of the Convention made by the Calcutta Dock Workers' Union, to the effect that, since 1982, the escorts and guards employed by *Coal India Ltd.* have to work for 24 hours continuously without any break.

2. The Committee notes the communication from the *Mahabubnagar District Palamoori Contract Labour Union* to the effect that workers in the Palamoori district work 12 hours per day and that overtime is not remunerated at the proper rates. The Committee likewise notes the comments of the *Bijli Mazdoor Panchayat* which also

complains of a 12-hour working day and the lack of proper overtime remuneration for the employees of the thermal power station belonging to the Gujarat Electricity Board. In its reply, the Government states that the working conditions which the *Bijli Mazdoor Panchayat* objected to affect not the workers at the thermal power station, but self-employed workers known as *mukadams*, who are under contract to the *Shital Traders* company to separate burnt coal ash from flowing water. They work an 8-hour day on average and the company pays them piece-work rates per ton of coal ash separated. The Government adds that the trade union has filed a complaint with the judicial court against *Shital Traders* for breach of the Factories Act, and a complaint on the same matter with the Gujarat High Court. The Committee requests the Government to keep the ILO informed of further action in this matter and to provide copies of any judgements or decisions handed down by the courts examining the cases.

3. Furthermore, the Committee recalls its observation of 1993 which read as follows:

> The Committee notes that Chapter XIV of the Railways Act, 1989, contains the main rules for the working time of railroad personnel. It asks the Government to provide a copy of the provisions contained in Chapter XIV. The Committee further notes that the Government has initiated action to frame rules and subsidiary instructions in accordance with these provisions. It asks the Government to keep it fully informed of progress made in this respect.
>
> The Committee notes the circular dated 13 April 1992 addressed to the general managers of the All Indian Railways, in which statutory hours of work for "essentially intermittent" work are set at 75 hours per week. The Government has supplied no information on consultations held with the organizations of employers and workers concerned before the adoption of these work schedules. The Committee would like to underline the importance of such consultations, required under *Article 6, paragraph 2, of the Convention*, and trusts that the Government will not fail to engage in such consultations when establishing work schedules for workers performing preparatory, complementary and essentially intermittent work.
>
> In this connection, the Committee notes the comments of the *Central Railway Mazadoor Sangh*, requesting 8-hour shifts for cabinmen, levermen, pointsmen and gatemen. The Government indicates that their work was classified to be "essentially intermittent", with periods of inaction aggregating to six hours or more in a tour of 12 hours of duty. However, the *Central Railway Mazadoor Sangh* claims that they were servicing approximately 20 to 40 trains in 12 hours, i.e. a traffic ten times greater than it was when the British rules were adopted. The Committee would be grateful if the Government would provide the results of the most recent job analysis concerning this group of workers.
>
> Lastly, the Committee notes, further to its previous observations, that the Government will soon take a decision in reply to the observations of the *Bharatiya Mazadoor Sangh*, which considered the special provisions contained in *Article 10* to be discriminatory against India, and invited the Government to consider denouncing the Convention or to take an initiative aimed at revising it.

4. The Committee would be grateful if the Government would provide information on the points raised above.

[The Government is asked to report in detail in 1997.]

* * *

In addition, a request regarding certain points is being addressed directly to the *United Arab Emirates*.

Convention No. 2: Unemployment, 1919

A request regarding certain points is being addressed directly to *Ukraine*.

Convention No. 4: Night Work (Women), 1919

Nicaragua (ratification: 1934)

The Committee notes the information supplied by the Government in its report.

In its previous comments, the Committee noted that the national legislation contains no provision banning night work by women, in accordance with *Article 3 of the Convention*. The Committee observes that there has been no progress in this respect although a new Labour Code has been adopted.

The Committee also notes that the women's organizations which were consulted and women deputies in the plenary debates on the new Labour Code at the National Assembly disagreed with prohibition of night work by women on the grounds that it places restrictions on their integration in the world of labour. The women deputies were of the view that labour legislation should treat women in the same way as men and that only maternity protection should be regulated. The Committee also notes the Government's statement that it is necessary to take account of the social and economic situation of peoples among which the woman, in a high percentage of cases, is the head of the family and the only economically active person in the family group and, accordingly, the only source of income.

The Committee notes the Government's statement that in Nicaragua there is no prohibition on night work by women. Consequently, it requests the Government to take the necessary measures to ensure that national laws are consistent with the international commitments made.

In this regard the Committee recalls that, in 1990, the International Labour Conference adopted a Convention (No. 171) and a Recommendation (No. 178) on night work and a Protocol to the Night Work (Women) Convention (Revised), 1948 (No. 89) which meet, through different approaches, both the concerns about the employment of women and the protection against forms of work which have adverse effects on the health and the family and social life of workers.

* * *

In addition, a request regarding certain points is being addressed directly to *Lithuania*.

Convention No. 5: Minimum Age (Industry), 1919

Bolivia (ratification: 1954)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> Regarding section 58 of the General Labour Act, which authorizes the employment of children under 14 years of age as apprentices, the Committee has been asking the Government to bring it into conformity with the Convention, which allows exceptions to the minimum age for admission to employment or work only for industrial undertakings in which only members of the same family are employed *(Article 2 of the Convention)* or for work

done by children in technical schools, provided that such work is approved and supervised by public authority *(Article 3).*

The Committee noted the Government's earlier reference to the draft General Labour Act, prepared with ILO assistance, in which the provision concerning the minimum age for conclusion of the employment contract is set at 14 years, without exception for apprentices.

Recalling that it has been commenting on this matter for many years, the Committee can only hope that the draft will soon be adopted as the new Act, and it asks the Government to supply information on all progress made.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Saint Lucia, Viet Nam.*

Convention No. 6: Night Work of Young Persons (Industry), 1919

Requests regarding certain points are being addressed directly to the following States: *Cambodia, Lithuania, Viet Nam.*

Information supplied by *Chad* in answer to a direct request has been noted by the Committee.

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Nicaragua (ratification: 1934)

1. *Article 2 of the Convention.* For some time, the Committee has been commenting on the fact that the provisions of the Labour Code (section 155 in relation with sections 116 and 117) are not sufficient to ensure an unemployment indemnity in case of shipwreck for a minimum of two months. In its report, the Government provides a copy of the text of Chapter III of the new Labour Code, concerning work on the sea (and navigable waterways), adopted by the National Assembly but which does not appear to have entered into force. The Committee notes this information. It again points out that section 172 of Chapter III guarantees only that the seaman shall receive an indemnity in accordance with the law. The Committee recalls that under Article 2 of the Convention the unemployment indemnity due to seamen in every case of loss or foundering of any vessel shall be paid for the days during which the seaman remains unemployed, for a minimum of two months. The Committee hopes that the Government will take the necessary measures in the near future to give full effect to the Convention on this point. It would appreciate receiving information on any progress made in this respect.

2. *Article 1, paragraph 1, of the Convention.* The Committee notes that article 167 of the aforementioned Chapter III excludes captains and officers from the definition of seamen, whereas Article 1 does not permit such an exclusion for purposes of entitlement to an indemnity in case of shipwreck. The Committee requests information on what measures have been taken or are envisaged to amend Chapter III on this point.

Papua New Guinea (ratification: 1976)

The Committee notes with regret that for the fourth time the Government's report has not been received. The Committee must return to the question in a new direct request. It hopes that the Government will take the necessary steps and supply the information requested.

Portugal (ratification: 1981)

Article 2. The Committee notes the information supplied by the Government concerning the revision of the Regulations on Maritime Employment (Decree No. 45/969 of 1964), and particularly section 239, which limits the period of unemployment indemnity and subjects the right to compensation to the diligence shown by the crew in protecting the vessel, contrary to the provisions of the Convention. The Committee also notes the text of sections 87 and 102 of the new draft legal rules governing individual contracts of employment of personnel in the merchant marine. The Committee therefore hopes that the Government will be able to indicate in its next report the legislative measures that have been adopted to give full effect to this Article of the Convention.

Seychelles (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee takes note of the adoption of the Seychelles Merchant Shipping Act (1992) which repeals the United Kingdom Merchant Shipping Act which was previously applicable. Since it appears that there is no provision in the new Act for unemployment indemnity to seamen in the case of loss or foundering of a vessel, the Committee hopes that the Government's next report will contain full information on any law or regulations giving effect to the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Papua New Guinea, Solomon Islands*.

Convention No. 9: Placing of Seamen, 1920

Requests regarding certain points are being addressed directly to the following States: *Lebanon, Luxembourg*.

Convention No. 10: Minimum Age (Agriculture), 1921

Argentina (ratification: 1936)

The Committee notes from the Government's report that it has the intention to ratify the Minimum Age Convention, 1973 (No. 138). It recalls, however, that the denunciation of Convention No. 10 depends upon the acceptance of the obligations of Convention No. 138 in respect of agriculture. Noting that Convention No. 10 remains fully in force in the meantime, the Committee requests the Government to continue to supply information on its application.

The Committee notes the information supplied by the Government to the United Nations Committee on the Rights of the Child, which examined its initial report at its

Seventh Session (October 1994). It notes, in particular, the indication in the Government's report to the United Nations Committee that the problem of child labour is a serious one, whose dimensions are certainly greater than is usually recognized, and that child labour is important notably in rural activities, where it may be involved in formal productive activities (CRC/C/8/Add.17, paragraph 58).

The Committee also notes the indication by the Government representative at the Committee on the Rights of the Child that the submitted figures of under-age children illegally working did not include children engaged in rural farm work, considered to be a contribution to the family (CRC/C/SR.179, paragraph 41). Recalling that the Convention applies to any public or private agricultural undertaking, whatever the reason for the child to work, with the only exception of work done in technical schools *(Articles 1 and 3 of the Convention)*, the Committee requests the Government to supply detailed information on the application of the Convention in practice, as required by *point V of the report form*, including statistics and extracts from official reports, as well as on the measures taken or envisaged accordingly.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Australia, Austria, Bahamas, Gabon, New Zealand, Sri Lanka, United Kingdom*.

Convention No. 11: Right of Association (Agriculture), 1921

Burundi (ratification: 1963)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in previous direct requests, which read as follows:

> The Committee notes that for several years the Government has indicated in its reports that Legislative Decree No. 1/90 of 25 August 1967 respecting rural associations gives effect to the Convention. It also notes that this text provides that, in the case of public funding, the Minister of Agriculture may establish rural associations (section 1), that membership of such associations is compulsory (section 3) and that the Associations' statues are established by the Minister (section 4). It also provides that the obligations of members of these associations include the performance of services in the interest of common enterprise, payment of a single or periodic contribution, the provision of agricultural or livestock products and the observance of rules of cultural or other discipline (section 7), and that failure to fulfil these obligations is punishable by seizure of the member's possessions (section 10).
>
> The Committee considers that the Legislative Decree respecting rural associations which imposes the above obligations on agricultural workers, does not give effect to the Convention. It therefore ask the Government in its next report to indicate the measure that have been taken or are contemplated to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers *(Article 1 of the Convention).*

[The Government is asked to report in detail in 1997.]

* * *

In addition, a request regarding certain points is being addressed directly to *Chad*.

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Rwanda (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In reply to the Committee's previous comments, the Government indicates that studies are at an advanced stage for the improvement of the conditions of agricultural workers, temporary workers and day workers at the level of both public authorities and employers' and workers' organizations. The Committee notes this information. It hopes that the Government will be able, in accordance with the Convention and the assurances it has been giving for over ten years, to take appropriate measures, in the light of the results of these studies and with ILO assistance if necessary, to explicitly extend the application of the Legislative Decree of 20 August 1974 (on the organization of social security) to all agricultural workers, including day workers and temporary workers. The Committee asks the Government to indicate progress made in this respect.

* * *

In addition, a request regarding certain points is being addressed directly to *Mexico*.

Convention No. 13: White Lead (Painting), 1921

Algeria (ratification: 1962)

The Committee notes that the Government's report has not been received. It must, therefore, repeat its previous observation which read as follows:

> In comments it has been making since 1965, the Committee noted that there were no specific provisions giving effect to the Convention. The Government indicated previously that the text to give effect to the provisions of the Convention had already been prepared and submitted to the social partners for examination. The Committee notes the Government's indication in its last report to the effect that the regulations to give effect to the provisions of the Convention have still not been adopted.
>
> The Committee hopes that the necessary measures will be taken in the near future to ensure the application of *Article 1 of the Convention* (prohibition of the use of white lead and sulphate of lead in the internal painting of buildings), *Article 2* (regulation of the use of white lead in artistic painting), *Article 3* (prohibition of the employment of males under 18 years of age and of all females in any painting work involving the use of white lead) and *Article 5* (regulation of the use of white lead in painting operations for which its use is not prohibited). In regard to the establishment of statistics on morbidity and mortality due to lead poisoning, the Committee notes the Government's indication to the effect that the National Social Insurance Scheme has been apprised of the question of statistics laid down in *Article 7* of the Convention with a view to the implementation of this Article.
>
> The Committee requests the Government to indicate any progress made and to provide a copy of the relevant text as soon as it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Benin, Cameroon, Central African Republic, Côte d'Ivoire, Guatemala, Iraq, Italy, Luxembourg, Madagascar, Malta, Netherlands, Norway, Senegal, Sweden.***

Information supplied by *Argentina, Greece* and *Poland* in answer to a direct request has been noted by the Committee.

Convention No. 14: Weekly Rest (Industry), 1921

Argentina (ratification: 1950)

In its previous comments, the Committee noted the observations made by the United Maritime Workers' Union (SOMU) alleging that Decrees Nos. 1772/91, 817/92 and 1492/92 annulled almost all collective agreements which had been in force in the maritime and related sectors. The Committee notes that, in its reply to the comments of the SOMU, the Government refers to Act No. 24.493 of 31 May 1995 (promulgated on 22 June 1995), adopting various measures concerning "national labour". The Committee is addressing a request directly to the Government concerning the application of *Article 1 of the Convention.*

Bolivia (ratification: 1954)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In earlier comments, the Committee noted that under section 31 of Decree No. 244 of 1943 (a regulation issued under the General Labour Law), an employer may grant to a worker, in the event of work on the weekly rest day, either compensatory rest or compensatory remuneration. In a report received in February 1991, the Government indicated that the General Labour Law was in the process of revision with the technical assistance of the ILO. In its report for 1994 on the application of several Conventions, including Convention No. 14, the Government indicates there have been no legislative changes.
>
> The Committee must recall that *Article 5 of the Convention*, provides for, as far as possible, compensatory periods of rest in cases where exceptions have been made regarding the right to weekly rest. In this regard, the Committee once again points out that section 31 of Decree No. 244 allows more latitude to the employer than is envisaged under the Convention. It hopes that the new legislation will be adopted as soon as possible, with a provision to ensure that workers employed on a weekly rest day are granted a compensatory rest. It requests the Government to indicate the progress achieved in this respect and to supply a copy of the relevant text when it is adopted.
>
> The Committee also requests the Government to refer to the comments that it has made under Convention No. 106.

The Committee again expresses the hope that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Haiti, Solomon Islands.*

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Australia, Denmark, Djibouti, Dominica, Finland, Japan, Seychelles, Solomon Islands, United Kingdom.*

Convention No. 17: Workmen's Compensation (Accidents), 1925

Kenya (ratification: 1964)

The Committee notes that a new Work Injury Benefits (Insurance) Scheme Bill has been prepared. The Committee recalls that for many years it has been raising several issues concerning application of the Convention and that this case was discussed in the 1994 Conference Committee. It hopes that these issues will be fully taken into consideration in the adoption of the Bill so as to give full effect to the following Articles of the Convention:

Article 2(2) (including within the normal scope of the scheme workers ordinarily employed outside Kenya but temporarily employed in Kenya by an employer who carries on business chiefly outside Kenya, subject to international agreements).

Article 5 (payment of compensation in periodic form where the degree of incapacity is less than 40 per centum, unless the competent authority is satisfied that the lump sum will be properly utilized). (It is also recommended to include children born within ten months of the *death* of the worker in determining the dependants entitled to an allowance.)

Article 7 (provision of a constant attendance allowance for as long as the state of health of the injured worker requires it).

Article 9 (compensation for expenses, particularly for medical, surgical, pharmaceutical and hospital treatment, and supply and replacement of artificial limbs and surgical appliances, *without fixing a maximum amount*; and provision of medical aid to an injured worker irrespective of the duration of the incapacity).

The Committee hopes that the Bill will be enacted in the near future, and that it will take into account all of the above-mentioned points. It reminds the Government of the possibility of availing itself of the technical assistance of the Office for the establishment of the new insurance system of compensation for industrial accidents. The Committee requests the Government to report on any progress made in this respect.

[The Government is asked to report in detail in 1997.]

Myanmar (ratification: 1956)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In reply to the Committee's previous comments the Government indicates that the enactment of new labour laws, including the Workman's Compensation Act, should be made only after the adoption of the new state Constitution with a view to making them in line with the provisions contained therein. The Committee notes this information. In view of the fact that it has been commenting on the application of the Convention since 1959 and that the revision of the Workman's Compensation Act has been referred to several times by the Government since 1987, the Committee can only express once again the hope that the new Workman's Compensation Act will be adopted in the very near future so as to provide in particular:
>
> (a) in accordance with *Article 5 of the Convention*, that the compensation payable to the injured workman or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum if the competent authority is satisfied that this will be properly utilized;
>
> (b) in conformity with *Article 10*, that no maximum amount shall be fixed for the supply and normal renewal of such artificial limbs and surgical appliances as are recognized to be necessary;

(c) in conformity with *Article 11* that measures be taken to ensure in all circumstances the payment of compensation to victims of industrial accidents or their dependants in case of insolvency of the employer or insurer.

2. The Committee requests the Government to supply information on the number of protected employees under the Workman's Compensation Act and the social security legislation respectively in relation to the total number of employees who are working in industrial and commercial undertakings, as well as the amount of benefits provided under these two laws in case of industrial accidents.

New Zealand (ratification: 1938)

Articles 9 and 10 of the Convention. In previous comments the Committee had drawn the Government's attention to the fact that the Accident Rehabilitation and Compensation Insurance (ARCI) Act of 1992 and its regulations require victims of industrial accidents to bear a part of the costs of the necessary medical and other treatment. Furthermore, it had noted that the relevant regulations do not allow for payment for aids and appliances which cost less than 100 dollars, nor for the maintenance, repair, etc. of any aid or appliance where the amount to be paid is less than 200 dollars in any 12-month period. The maximum amounts payable under the regulations, excluding certain specific devices, are limited to 5,000 dollars per claimant over any three-year period. Further to these comments, the Committee notes the information provided by the Government in its report for the Occupational Diseases Convention (Revised), 1934 (No. 42), as well as the observations made by the New Zealand Council of Trade Unions (NZCTU) and the Government's reply.

The Government explains in its report for Convention No. 42 that the ARCI Act of 1992 provides for substantial contributions to medical costs. It adds that, although the amounts of medical costs and social rehabilitation are currently restricted to amounts permitted in regulations, an amendment was passed by the New Zealand Parliament in August 1996 which will permit a more flexible approach to reimbursing these costs. The Government anticipates that this will result in a higher level of medical costs and rehabilitation being provided, although this depends upon the way in which broad discretions provided in the Act are implemented.

In its observation, the NZCTU states that the amendments to the ARCI Act of 1992 fail to ensure that medical, surgical and pharmaceutical treatment and aids are provided at no cost to the injured worker. In reply, the Government reiterates its expectation that the amending legislation will result in a higher level of medical and rehabilitation benefits but adds that it will be necessary to monitor the implementation of the amending legislation, in order to evaluate compliance with the Convention.

The Committee takes note of this information. It once again urges the Government to take the necessary steps in the very near future to ensure full compliance with *Article 9 of the Convention*, according to which the cost of medical, surgical and pharmaceutical aid recognized to be necessary in consequence of industrial accidents shall be defrayed either by the employer or by the insurance institutions, as well as with *Article 10*, according to which the injured workers shall be entitled to the supply and renewal of such artificial limbs and surgical appliances as are recognized to be necessary. In addition, the Committee would like the Government to supply a copy of the above-mentioned amendments to the ARCI Act of 1992 and of any other which may have been adopted.

[The Government is asked to report in detail in 1998.]

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the fourth consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 7 of the Convention.* The Committee notes that Regulations No. 37 of 1984 do not, as set out in this provision of the Convention, provide for the provision of additional compensation to victims of accidents who suffer incapacity and require the constant help of another person. The Committee therefore hopes that the Government will take the necessary steps to give effect to this provision of the Convention.
>
> *Articles 9 and 10.* In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, section 52(1) of the National Insurance Act No. 10 of 1978 limits to a prescribed amount the right to medical assistance and the provision of artificial limbs. In view of the fact that the Regulations issued under the Act do not appear to contain provisions in this connection, the Committee hopes that the Government will take the necessary steps to secure the application of these Articles of the Convention, which do not fix any maximum amount as regards such benefits.
>
> The Committee also requests the Government to indicate whether the medical treatment set out under section 52(1) of Act No. 10 of 1978 also covers pharmaceutical assistance and the supply, repair and renewal of artificial limbs, in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that for the fourth consecutive time the Government's report has not been received. The Committee must return to the question in a new direct request. It hopes that the Government will, without fail, take the necessary steps and supply the information requested.

Uganda (ratification: 1963)

Article 5 of the Convention. The Committee notes the information contained in the Government's report, particularly that draft legislation revising the workers' compensation law is due for presentation to the competent authority for adoption. The Committee cannot but once again hope that the legislation will be adopted in the very near future and that it will ensure that compensation for permanent incapacity or death is paid in the form of periodical payments throughout the contingency, unless the competent authority is satisfied that a lump sum payment will be properly utilized, as is required under Article 5. The Committee asks the Government to supply a copy of the new Act once adopted.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *New Zealand, Sao Tome and Principe.*

Convention No. 18: Workmen's Compensation (Occupational Diseases), 1925

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that, for the fourth time, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments, the Committee notes the new Social Security Act, No. 1/90, of 31 January 1990. It notes that, like the former legislation, the new Act does not contain a list of occupational diseases as set out in *Article 2 of the Convention*. The Committee notes, however, that pursuant to section 87(2) of the Act, diagnosis of occupational diseases is carried out by medical services on the basis of specifically defined technical standards. Furthermore, section 146(1) of Act No. 6/92 of 20 March 1992 issuing the rules on individual conditions of work requires employers to report occupational diseases and keep a record of them.
>
> The Committee would be grateful if the Government would provide detailed information on the manner in which diagnosis of occupational diseases is carried out in practice for purposes of compensation and to provide a copy of the technical standards adopted under section 87(2) of Act No. 1/90. It trusts that the Government will not fail to take the necessary measures, in the context of the above technical standards or any other implementing regulations, to adopt in the very near future a list of occupational diseases which includes at least those contained in the Schedule to Article 2 of the Convention, setting out the diseases which are to be recognized as such in the event that they are contracted in the circumstances set out in the Schedule. In this connection, it suggests that the Government might wish to seek technical assistance from the ILO.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Central African Republic (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention.* Further to its previous comments, which it has been raising for a number of years, the Committee notes from the Government's reports under this Convention and Convention No. 118, that the necessary amendments to bring the national legislation into conformity with the Convention are expected to be adopted soon. The Committee recalls the need to amend the legislation so that the dependants (survivors) of a worker, who was a national of a State bound by the Convention, who were not resident in the Central African Republic at the time of the victim's death and continue not to be so resident, may claim the survivors' benefit established in the legislation on employment injury compensation, in accordance with the Convention. It again expresses the hope that the Government will not fail to indicate progress on this matter in its next report.

The Committee draws the Government's attention to the possibility of requesting the technical assistance of the Office.

Iraq (ratification: 1940)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In reply to its previous comments the Government refers mainly to certain provisions of the Workers' Pension and Social Security Law, No. 39 of 1971, without supplying the detailed information on the points raised by the Committee, which dealt in particular with the follow-up of the conclusions and recommendations, approved by the Governing Body at its 250th (May-June 1991) Session, of the Committee set up to consider the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution alleging non-observance by Iraq of a number of Conventions. In this situation the Committee hopes that the Government will not fail to supply a report for examination at its next session which will contain detailed information on the following points:
>
> 1. (a) The Government is requested to indicate any other provisions (apart from Decision No. 603 of 1987) or contractual conditions which may affect the right of foreign workers engaged in state enterprises, such as arms factories, to receive compensation for industrial accidents both in Iraq and in the country of their new residence.
>
> (b) As regards the situation of temporary workers, to whom Decision No. 603 applies, please indicate which provisions of the legislation ensure the right of such workers to receive compensation in the case of industrial accidents, particularly in cases where they terminate their service before the expiration of the fixed period of employment or the completion of the work for which they were engaged (see also under point 2 below).
>
> 2. (a) In its previous comments, the Committee observed that under section 38(b)(ii) of Law No. 39 of 1971, which provides for the payment of compensation abroad to an Arab citizen if he has "returned to *his* country at the *end* of his insured period of service", Arab workers who leave Iraq *before* their contract period has expired or who settle in a country *other* than their country of origin, may be refused payment of compensation due to them. On the other hand, under the same provisions no such restrictions are applied in respect of Iraqi workers. The Committee recalls in this respect that in its previous report the Government stated that Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq was being studied by the Government with a view to its revision. The Committee, therefore, once again expresses the hope that the Government will not fail to indicate the legislative measures taken or contemplated to ensure equality of treatment between nationals of Iraq and Arab workers in respect of compensation for industrial accidents, particularly in the case of their residence abroad, including the modifications to Instruction No. 2 of 1978. Please supply a copy of the text of such legislative measures, when adopted.
>
> (b) As regards nationals of States bound by the Convention other than Arab countries, the Committee recalls that under section 38(b)(iii) of Law No. 39 of 1971, no payment of benefits is made outside Iraq except under reciprocity agreements or international labour Conventions and subject to the necessary authorization under Instruction No. 2 of 1978. Please indicate measures taken or contemplated at the level of the Iraqi Institute of Social Security to ensure, without any restrictions, that in all cases compensation benefits are paid to all workers who are nationals of a country bound by the Convention, in their new country of residence.
>
> 3. The Committee notes, from the information supplied by the Government representative in the discussion in the Conference Committee in 1994 on the application of Convention No. 118 by Iraq, that the Government intends to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of the national economic situation. The Committee would like the Government to continue to provide information on any measures taken or contemplated with a view to resuming payment of compensation for industrial accidents to beneficiaries residing

abroad, accompanied by the relevant statistical data. Please also indicate whether workers who left Iraq at the time of the war and who had no opportunity to present their requests for payment of the compensation due to them, may do so from their new place of residence abroad and, if so, in what way.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malaysia

Peninsular Malaysia (ratification: 1957)

Sarawak (ratification: 1964)

Article 1, paragraph 1, of the Convention. In its previous comments, the Committee noted that accident compensation coverage for foreign workers has been transferred from the Employees' Social Security Scheme (governed by the Employees' Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act, 1952) as of 1 April 1993, and that the level of benefits in case of industrial accident provided under the Workmen's Compensation Scheme is substantially lower than that provided under the Employees' Social Security Scheme. Consequently, it hoped that the Government would take the necessary steps in the near future to place foreign workers back under the Employees' Social Security Scheme under the same conditions as nationals, thereby providing equal treatment under the law for compensation for industrial accidents. This case was also discussed during the 1996 Session of the Conference Committee, which drew similar conclusions.

The Government points out in its report that certain categories of nationals are not covered under the Employees' Social Security Act; that the States sending migrant workers to Malaysia endorse the removal of foreign workers from the Employees' Social Security Act; and that foreign workers voluntarily consent to this arrangement when accepting work in Malaysia. Furthermore, it states that the Workmen's Compensation Act has been amended.

The Committee notes this information. It would first like to clarify that the principle of equality of treatment between nationals and non-nationals concerning workers' compensation as provided for under Article 1(1) of the Convention, cannot be bargained away, even with the consent of the worker. As to the endorsement of the arrangement by the States sending migrant workers to Malaysia, the Convention does allow in Article 2 for special agreements to be made between the Members concerned, but only in respect of workers temporarily or intermittently employed in the territory of one Member on behalf of an undertaking situated in the territory of another Member. In the present case, this provision is not applicable.

Second, the Committee points out that the amendment to the Workmen's Compensation Act merely increases the ceiling on lump-sum benefits and does not transform the benefit into a periodic payment equivalent to that provided under the Employees' Social Security Act. Therefore, in light of the fundamental importance of the principle of equality of treatment concerning workers' accident compensation, the Committee cannot but once again express the hope that the Government will take the necessary measures in the near future, such as by placing foreign workers back under the scope of the Employees' Social Security Act in the same conditions as nationals, in order to ensure that the benefit foreign workers receive for work injury is equal to that paid to nationals.

See also under Convention No. 97.

[The Government is asked to report in detail in 1997.]

Mauritius (ratification: 1969)

Article 1 of the Convention. In its previous comments, the Committee had pointed out that section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended, provides that foreign workers may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years, in contradiction with Article 1 of the Convention. In reply, the Government states that an administrative measure has been introduced whereby prior to the issue of a work permit to a non-citizen, the prospective employer must sign an agreement (agreement in respect of employment of non-citizens) stating, inter alia, that it shall provide the foreign worker with insurance against work injury.

The Committee notes this information. It points out, however, that the agreement does not guarantee that the level of benefit provided shall be equal to that provided under the National Pensions Scheme. Furthermore, the agreement is only between the Government and the prospective employer and does not give the foreign worker or his or her survivors a direct and enforceable right. The Committee recalls that *Article 1, paragraph 2* of the Convention provides that equality of treatment in respect of compensation for industrial accidents shall be guaranteed without any condition as to residence to the nationals of every State which has ratified the Convention who are victims of an industrial accident, as well as to their dependants. It once again expresses the hope that the Government will take the necessary steps to fully comply with the requirements of the Convention, in particular by amending section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978. It would appreciate receiving information on any progress made in this respect.

Portugal (ratification: 1929)

With reference to its previous comments, the Committee notes with satisfaction the adoption of Law No. 22/92, which amends Act No. 21/27. Law No. 22/92 creates equality of treatment for foreign workers without reference to the legislation of the relevant foreign country *(Article 1 of the Convention)*. It also removes the exclusion of foreign workers who are employed by a foreign enterprise and who have a right of compensation under the legislation of their own country, unless they are only temporarily or intermittently employed in Portugal and an agreement has been established between Portugal and the State concerned *(Article 2)* for the application of the legislation in full in that State.

Sao Tome and Principe (ratification: 1982)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 1, of the Convention.* The Committee notes the Government's statement to the effect that Act No. 6/92 repealed Legislative Decree No. 507 of 1958, which contained provisions which were not in conformity with the Convention since they made equality of treatment between nationals and foreign workers in respect of compensation for industrial accidents subject to a condition of reciprocity. The Committee notes, however, that under section 12 of Act No. 1/90 respecting social security the general scheme does not appear to cover foreign workers exercising an activity on the national territory unless an agreement concluded with the country of origin of the person concerned provides for such coverage. Under these conditions, the Committee is bound once again to remind the Government that Article 1, paragraph 1, of the Convention obliges any State which has ratified the Convention to grant to the nationals of any other State which has also ratified the Convention the same treatment in respect of workmen's compensation as it grants its own

> nationals, *as of right* and irrespective of the conclusion of any reciprocity agreement. The Committee hopes that the Government will be able to take the necessary measures to supplement the terms of sections 11 and 12 of Act No. 1/90 so as to guarantee to all foreign workers who are nationals of a State which has ratified the Convention, and their dependants, the protection of the legislation respecting compensation for industrial accidents under the same conditions as to its own nationals. It hopes that the Government's next report will contain information on the progress achieved in this respect.

The Committee draws the Government's attention to the availability of technical assistance of the Office.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Angola, Burundi, Cape Verde, Comoros, Djibouti, Guinea-Bissau, India, Islamic Republic of Iran, Kenya, Malawi, Nigeria, Saint Lucia, Sao Tome and Principe, Senegal, Yemen.***

Information supplied by ***South Africa*** in answer to a direct request has been noted by the Committee.

Convention No. 20: Night Work (Bakeries), 1925

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee has been formulating comments for many years on the necessity to take measures to give full effect to several provisions of Conventions Nos. 1, 20 and 30.
>
> The Government reiterates in the reports provided this year that these comments have been taken into account in the preliminary draft of the new General Labour Law, prepared with the technical assistance of the ILO. Furthermore, it states that the preliminary draft has been sent to the central organizations of employers and workers (CEPB and COB) for their comments, before the finalized draft is submitted to the National Congress for adoption. The Committee trusts that the new legislation will be adopted in the near future and that it will be in full conformity with the above-mentioned Conventions. It requests the Government to supply detailed information on all relevant developments on the matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 22: Seamen's Articles of Agreement, 1926

Argentina (ratification: 1950)

The Committee notes the information supplied by the Government in its report. It also notes the comments made by the Union of United Maritime Workers (SOMU) on 20 August 1996 and 13 December 1995 and the Government's reply to them.

The Committee notes that for several years SOMU has been making comments on the application of the Convention following the adoption of a number of decrees on maritime law and, specifically, the adoption of Decrees Nos. 1772/91, 817/92 and 1493/92. The Committee recalls that Decree No. 1772/91 authorized shipowners to request the provisional cessation for a period of two years of registering under the Argentine flag, with certain consequences for seafarers' contracts; Decree No. 817/92 declared inapplicable the clauses of conventions and agreements or any standard laying down working conditions "distorting production"; Decree No. 1493/92 instituted for a period of four years a register for registration of foreign ships such as bare-boat vessels. The Committee recalls that SOMU alleged that virtually all collective agreements were no longer in force, thus the maritime sector was disorganized due to lack of applicable regulations, which was worsening seafarers' quality of life and conditions of work. Furthermore, it indicated that many Argentine ships have abandoned the Argentine flag and registered under flags of convenience.

(a) The Committee noted that a new session of the Tripartite Consultation Commission would be convened to which the Argentine Chamber of Shipping would be invited and which would include consideration of the Committee's observations. The Committee notes that two meetings of the Tripartite Consultation Commission have been held, in April and May 1996 respectively, but that they have not enabled the parties to reach agreement. The Committee requests the Government to supply information on any developments in this situation, particularly in the Tripartite Consultation Commission, with a view to ensuring the application of the Convention, and particularly *Article 3, paragraphs 4 and 5; and Article 6, paragraph 3*, to which the Committee referred previously.

(b) The Committee also noted the information concerning the preparation of a law to create a Second Argentine Register which would put an end to the transitory situation created by Decree No. 1772/91. The Committee expressed the hope that any text adopted would ensure that no seagoing vessel listed in the second register, once it was operational, and to which the Convention applies *(Article 1)* will be excluded from the scope of the legislation which gives effect to this international standard. The Committee notes the Government's indications in its report to the effect that the draft law has not yet been adopted by Parliament. The Committee requests the Government to supply information on any developments in the matter.

The Committee also refers to the comments it has made on the application of Convention No. 98.

Liberia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report, which refers to Liberian Maritime Law and the corresponding regulations, as amended up to 1992.
>
> *Article 3, paragraph 4, of the Convention.* The Committee notes that under Regulation 10.320(1) a foreign language version of the articles of agreement may be appended to the English version. The Committee points out that the above-mentioned regulation goes in the direction of meeting the requirement of this provision of the Convention. However, in order to ensure full compliance with the Convention in the case of a seafarer who does not understand English, it is necessary to have the contract written in a language he understands and that, if need be, the representative of the competent authority or the master, in the presence of witnesses, should explain the contents of the contract. The Committee asks the Government to indicate the measures taken or under consideration to ensure that full effect is given to this provision of the Convention.
>
> *Article 9, paragraph 2.* The Committee notes that, under section 323(4) of Liberian Maritime Law, where articles of agreement are not for a stated period they expire at the end of one year, provided that at least five days' prior notice has been given. It draws the Government's attention to the fact that national law must prescribe the manner of giving

notice, so as to preclude any subsequent dispute between the parties. Please provide all useful information on this matter.

Articles 13 and 14, paragraph 2. Please indicate the measures taken or contemplated to ensure the application of these provisions of the Convention.

Point V of the report form. Please give a general appreciation of the manner in which the Convention is applied.

The Committee once again hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Estonia, Ghana.*

Convention No. 23: Repatriation of Seamen, 1926

Ireland (ratification: 1930)

The Committee notes the information in the Government's report according to which it is to introduce amending legislation, including amendments to the Merchant Shipping Act 1906, to ensure the right to repatriation of seafarers landed in a Commonwealth country, as well as for foreign seafarers who join the ship in one foreign port and are landed in another. The Committee notes that the Government hopes to have this legislation enacted by the end of 1996 and recalls the same comment in the Government's previous report according to which it hoped to have this legislation enacted by the end of 1995. In this regard, the Committee requests the Government to provide information concerning the status of this Bill and to forward copies of the amending legislation as soon as it is adopted.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Estonia, Portugal.*

Convention No. 24: Sickness Insurance (Industry), 1927

Austria (ratification: 1959)

In its previous comments, the Committee asked the Government for information on the registration of foreign women employed in domestic households, in light of the Federal Chamber of Labour's comments that these women often were not registered for sickness insurance because they tend to work on an hourly basis and employers are reluctant to register them. In its reply, the Government states that there is entitlement to benefit irrespective of whether the employment is registered or contributions are paid; thus non-registration has no negative effects, particularly concerning maternity benefits. The Committee notes this information. It requests the Government to supply information on whether, during the period for which the report is concerned, unregistered household workers, in particular foreign workers without a formal employment contract, have applied for sickness benefit under the sickness insurance fund and, if so, whether benefit has in fact been paid.

The Government also states that it has contacted the Federal Chamber of Labour concerning non-registration of household employees with the sickness insurance fund and that further developments in this area will continue to be examined. The Committee would appreciate being kept informed of any such developments.

Djibouti (ratification: 1978)

The Committee notes with regret that for the second time the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes from the Government's report that there have been no changes in the application of the Convention. It recalls that for many years it has been requesting the Government to take steps to amend the legislation so as to provide for sickness insurance. It again expresses its hope that, with the technical assistance of the International Labour Office, the Government will endeavour to establish a sickness insurance scheme in accordance with the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Haiti (ratification: 1955)

Further to previous comments, the Government states in its report that an Office for Work Injury, Sickness and Maternity (OFATMA) had been created to establish a social security regime, but that its success to date has been limited due to socio-economic problems in the country. However, the Government is in the process of taking measures to improve the operation of the OFATMA. The Committee notes this information. It hopes that the Government's next report will contain information on the progress made toward the adoption of a sickness insurance scheme which will conform to the requirements of the Convention. In view of the political changes which have occurred in the country, the Committee suggests that the Government request the International Labour Office to resume technical assistance.

Spain (ratification: 1932)

See comments under Convention No. 102.

Convention No. 25: Sickness Insurance (Agriculture), 1927

Haiti (ratification: 1955)

See under Convention No. 24.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Colombia (ratification: 1933)

The Committee notes the observations made by the National Union of Food Industry Workers (SINALTRAINAL) concerning the refusal by certain enterprises in the food sector to apply the 19.5 per cent adjustment of the minimum wage for all Colombian workers decided upon by the Government as from 1 January 1996. It notes that these observations were transmitted to the Government by a letter dated 26 February 1996.

In the absence of a reply by the Government, the Committee requests the Government to indicate the measures that have been taken or are envisaged to ensure that the minimum rates of wages which have been fixed are binding on the employers and workers concerned, in accordance with *Article 3, paragraph 2, of the Convention* and are effectively applied in accordance with *Article 4*.

With reference to its previous comments, the Committee notes that section 175 of the General Education Act (No. 115 of 8 February 1994) provides that the wage system of educational staff in state services at the departmental, district and municipal levels shall be determined by Legislative Decree No. 2277 of 1979, Act No. 4(a) of 1992 and other texts which amend or supplement them. The Committee requests the Government: (i) to transmit the texts that are in force concerning the minimum wage rates applicable in accordance with the statutory minimum wage established for the national territory; (ii) to indicate whether these rates apply to all regions, including the Department of Santander, which was explicitly mentioned in the observations made previously by the General Confederation of Workers (CGT); and (iii) to indicate the measures which have been taken or are envisaged to ensure the application at the local level of the above minimum wage rates.

India (ratification: 1955)

The Committee notes the observations respectively made by the Tamil Nadu All India Trade Union Congress (AITUC), the Bijli Mazdoor Panchayat, the Mahabubnagar District Contract Labour Union and the Federation of Unorganized Migrant Labour of Goa (FUMLOG) concerning various infringements of the minimum wage regulations in the country. The Committee also notes the Government's comments on these observations. It recalls the Government's earlier statement that various proposals to amend the Minimum Wages Act were under active consideration by the Government, and requests the Government to indicate any progress made in this regard.

The binding force of minimum wages

In its observation, the Bijli Mazdoor Panchayat indicates that 4,000 Scheduled Tribe workers, the majority being women, and all belonging to the low caste called "Adivasis", are forced to work in inhuman conditions in the "Ash Area" by the Gujarat Electricity Board, a Statutory Board of the State Government of Gujarat, notwithstanding the fact that the "Ash Area" is attached to the Thermal Power Station and is a factory under the Factory Act. Thus, the Bijli Mazdoor Panchayat has filed a petition before the High Court of Gujarat for implementation of different labour laws in the State of Gujarat, including the Minimum Wages Act.

In reply to the Bijli Mazdoor Panchayat's observations, the Government states first of all that this complaint is not about the regular company (Thermal Power Station, Ukai) and its 2,150 regular employees, but is specifically regarding workers who are working outside the factory premises to separate burnt coal from the flowing water. The Government specifies that the Thermal Power Station, Ukai, is a government factory owned by the Gujarat Electricity Board which has given the work of lifting the burnt coal ash to M/S Shital Traders at the rate of Rs.13,100,000 for one full year. This firm employed 200 persons known as *Mukadams*, who have not been registered under the Contract Labour (Regulation and Abolition) Act, and whose remuneration rates are from Rs.155 to Rs.165 per ton depending on the quantity of burnt coal ash lifted from the premises. These *Mukadams* employ members of their family and, if necessary, outsiders for the job. *Mukadams* are paid piece-work rates on a monthly basis, while workers who are not members of the family are paid fixed wages of Rs.25 per day on a monthly basis. The minimum wage under the Minimum Wages Act, 1948, for unskilled workers is fixed at Rs.45 per day in the cases covered by any of the scheduled employment stipulated under the Act. However, according to the Government, the above activity has not been covered by any scheduled employment under the Minimum Wages Act, 1948. Provisions of the said Act, therefore, could not be implemented in this activity where there is no prescribed minimum wage. The Government deduces from this fact that there is, at present, no breach of the Convention, but states, however, that the Commissioner of Labour is making a proposal to cover this activity under the scheduled employment.

The Committee notes the Government's explanations and recalls the obligation for the ratifying State, under *Article 1 of the Convention*, to create or maintain minimum wage fixing machinery for workers employed in certain of the trades or part of trades in which two conditions prevail, namely: (i) the absence of arrangements for the effective regulation of wages by collective agreement or otherwise; and (ii) the existence of exceptionally low wages. It also recalls the explanations provided in paragraph 62 of its General Survey of 1992 on minimum wages, according to which the creation or maintenance of methods for fixing minimum wages is not enough to comply with the obligation arising from the Convention, but it is also necessary to use these methods for the effective regulation of minimum wages. The Committee notes the Government's statement that the Commissioner of Labour is making a proposal to include in the scheduled employment the activity of the workers who are working outside the Thermal Power Station, Ukai, premises (the "Ash Area") to separate burnt coal from the flowing water. It hopes that this action will be undertaken in the near future and requests the Government to supply information on any development in this respect. The Committee would also be grateful to be informed of the outcome of the petition before the High Court of Gujarat.

Application of minimum rates of wages to part-time workers

The Committee notes that, according to the Tamil Nadu AITUC, the Village Panchayat conservancy workers (sweepers and scavengers) and the pump operators in most districts are still not paid the notified monthly minimum wages of Tamil Nadu which since 1977 range in amount from Rs.100 with Dearness Allowance of Rs.85 to Rs.150 with Dearness Allowance of Rs.93.60. Conservancy and other works are only paid consolidated monthly wages of Rs.60.

In reply to the Tamil Nadu AITUC's comments, the Government indicates that the monthly minimum wage rates of unskilled workers in local authorities where workers like scavengers and pumpset operators are employed, were revised by the Government of Tamil Nadu on 1 July 1977 at the rates of Rs.100 to Rs.130 with a Dearness Allowance of Rs.85. In some of the districts, these categories of workers are receiving salaries, in accordance with the Fifth Tamil Nadu Pay Commission Report, which are higher than the minimum wage rates fixed by the Government. In some of the districts, these categories of workers are working part-time, i.e. less than the normal working hours. Therefore, these part-time workers are not paid at the minimum wage rates as per the prescribed norms, and their wages are fixed by the concerned District Collector taking into account the financial position of the Panchayat union concerned. The government of Tamil Nadu has issued necessary instructions to the Commissioners of all the Panchayat unions to pay the minimum wage rates fixed by the Government. These instructions are, however, applicable to full-time workers. Moreover, the trade unions are free to file claim petitions before the concerned authorities under Section 20(2) of the Minimum Wages Act, 1948, when they come across any case of violation. The

Government stresses that the workers engaged in any local authority are being paid at minimum wage rates wherever they are engaged in full-time work.

The Committee takes due note of these indications. It recalls that under Article 3.2 (2) of the Convention, minimum rates of wages which have been fixed shall be binding on the employers and workers concerned and, accordingly, unskilled part-time workers shall not be excluded from the application of the minimum wage rates of unskilled workers only because they are working part time; in other words, the minimum rate shall be applied in determining the amount of wages calculated pro rata on the hours worked. The Committee hopes that the Government will take the necessary measures to ensure that the wages of part-time workers are proportionate to the minimum rates of wages of unskilled workers in local authorities. It requests the Government to provide a copy of the following texts on minimum wages, as referred to in the Tamil Nadu AITUC's communication: (i) government of Tamil Nadu, G.O. No. 449 dated 6 June 1977; and (ii) R.D.L.A., letter No. 106883/M11/77.

Other points

The Mahabubnagar District Contract Labour Union indicates, in its observations, that the migrant labourers of the Mahabubnagar District, called "*Palamoori* labourers", do not receive minimum wages. The FUMLOG states that migrant workers are employed by factory owners in Goa under very precarious conditions of work, safety and health and living, without any social security protection and, in most cases, without being paid the minimum wage. The Committee notes that the Government has not provided information regarding these observations made by the Mahabubnagar District Contract Labour Union and the FUMLOG. It requests the Government to do so. It hopes that the Government will continue to indicate measures taken, by the central or the state governments, to ensure better application of the law on minimum wages in the entire territory, with particular reference to "*Palamoori* labourers", to migrant workers in Goa, and to homeworkers as mentioned in the Committee's previous comments.

A direct request is also being addressed to the Government on certain points, including the observations previously made by the United Trade Union Centre (UTUC) and the All India Organization of Employers (AIOE).

Paraguay (ratification: 1964)

The Committee notes the detailed discussion which took place in the Conference Committee in 1996. It must express its regret that it has not received a detailed report from the Government, as requested in its previous observation and in consequence of the Conference Committee's conclusions. It must therefore repeat its previous observation on the following points:

> The Committee notes the conclusions and recommendations of the tripartite committee set up to examine the representation made by the Latin American Central of Workers (CLAT), which were approved by the Governing Body of the ILO at its 264th Session (November 1995).
>
> *Article 3, paragraph 2(2) and (3), of the Convention* (in relation with point V of the report form). The Committee recalls that in its representation the CLAT states that the enterprise EXIMPORA SA has not complied with national minimum wages standards, which tantamounts, by implication, to non-compliance with the provisions of Article 3, paragraph 2(3), of the Convention, which guarantees the right to receive the minimum rates of wages, as fixed nationally, and at the same time excludes the possibility that these rates may be subject to abatement by individual agreement. The Committee also recalls the Government's statement in its communication that the Labour Code, in Chapter II, establishes and regulates

the minimum wage, as well as determining the machinery for fixing it and the cases in which it may be modified as a function of the economic situation and variations in the cost of living. The Government indicates that section 252 of the Labour Code envisages the establishment of a tripartite body, the National Minimum Wage Council, which it has not yet been possible to establish due to the fact that the Workers' Central Organization (CUT) and the Latin American Central of Workers (CLAT) have not appointed their representatives. However, the Government adds that, in accordance with section 256 of the Labour Code, Decree No. 4598, adopted on 11 July 1994, raises minimum wages in order to take into account the increase in the cost of living and the decline in the purchasing power of the population. Nevertheless, the Committee notes that according to the various studies carried out under the auspices of the ILO on labour relations in Paraguay, the situation denounced by the CLAT is only one example among many of the generalized non-compliance with the obligations deriving from the Convention.

The Committee requests the Government to indicate the measures which have been taken or are envisaged to ensure the application of the national legislation so as to guarantee: (i) the participation of representatives of workers and employers in minimum wage fixing machinery, in accordance with *Article 3, paragraph 2(2)*; and (ii) the right to receive the minimum rates of wages which have been fixed, which may not be subject to abatement by individual agreement, in accordance with *Article 3, paragraph 2(3)*.

Article 4 (in conjunction with *point V of the report form*). The Committee notes that section 259 of the Labour Code provides that "any worker who has received a wage lower than the established minimum is entitled to reclaim from his employer the amount remaining due. The labour administration shall establish a time period for the recovery of this amount, which may not exceed 30 days." The Committee also notes that, without prejudice to the other measures contained in the Code (section 384), section 390 provides that "employers who pay their workers wages lower than the minimum legal amount or the amount established by collective agreement shall be punishable by a fine amounting to a minimum of 30 days' wages for each worker concerned and double that amount for any repetition of the offence". The Committee also notes that the responsibility for ensuring the application of the requirements set out in labour laws and regulations and compliance with the obligations contained in the Labour Code is entrusted to the labour inspection services, by virtue of Decree No. 3286 of 4 March 1964, which empowers those services to carry out the necessary inquiries to identify violations and refer them to the labour administration (Directorate of Labour).

The Committee requests the Government to indicate the measures which have been taken or are envisaged to ensure the application of the national legislation with a view to: (i) making possible the operation of the national bodies which are responsible for supervising the application of the standards respecting minimum wages; and (ii) guaranteeing, through the labour administration authority, the recovery of any further wages due to workers who have received wages lower than the applicable minimum wage.

Point V of the report form. The Committee would be grateful if the Government would supply information on the effect given in practice to the Convention: (i) by supplying the available statistical data on the number and various categories of workers covered by the minimum wage regulations; and (ii) by indicating, for example, the results of the inspections carried out, the violations reported and the sanctions imposed.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belarus, Colombia, Dominica, India, Solomon Islands, Zimbabwe.*

Convention No. 29: Forced Labour, 1930

Algeria (ratification: 1962)

1. In its previous comments, the Committee referred to Act No. 84-10 of 11 February 1984 regarding civic service. This Act, as amended in 1986, provides that citizens who have completed a course of higher education or training as senior technicians in branches or skills judged to be of priority for economic and social development are subject to this service. These branches and skills are established by the annual development plan and issued in annex to the Finance Act (section 4, as amended, of Act No. 84-10). The length of civic service may not exceed four years (section 16, as amended, of Act No. 84-10) and, by virtue of section 17 of Decree No. 87-90 of 21 April 1987, made under Act No. 84-10, it varies between a minimum of two years and a maximum of four years depending on the region to which the individual is assigned. Under the terms of sections 32, 33, 34 and 38 of Act No. 84-10, those called up for civic service cannot obtain employment or exercise an occupation until they have satisfied their obligations as regards civic service.

The Committee noted that the list of branches was limited to medicine, pharmacy and dental surgery.

It nevertheless pointed out that service imposed upon persons who have received a particular training, under penalty of a sanction (the impossibility of exercising an occupational activity or obtaining employment) is contrary to Convention No. 29 and Article 1(b) of Convention No. 105, which has also been ratified by Algeria and requested the Government to examine, in the light of Conventions Nos. 29 and 105, the provisions of the Act on civic service.

2. For several years, the Committee has been drawing the Government's attention to the provisions of the legislation relating to national service (Ordinance No. 74-103 of 15 November 1974 to issue the National Service Code). Under these provisions, conscripts are obliged to participate in the functioning of various economic and administrative sectors. Under the Order of 1 July 1987, university-level conscripts, after three months of military training, serve in priority sectors of national activity, and generally as teachers. The Committee notes that these persons are also subject to two, three or even four years of civic service. The Committee noted that Act No. 89-19 of 12 December 1989 reduces the length of national service to 18 months and that Act No. 89-20 of the same date dispenses from national service citizens aged 30 years and over on 1 November 1989, irrespective of their legal situation in respect of national service.

In its latest report, in response to questions raised under points 1 and 2, the Government indicated that university-level conscripts preferred to carry out their service in priority sectors.

The Committee observes that preference for one sector or another in order to meet the obligations of the service does not affect the fact that it is compulsory service and does not eliminate the incompatibility with the Convention of the participation of conscripts in the functioning of various economic and administrative sectors since, as the Committee noted in its 1979 General Survey on the abolition of forced labour, compulsory military service is excluded from the scope of the Convention only if used for work of a purely military character.

The Committee requests the Government to take the necessary measures to ensure the observance of the Convention on this point and to supply information on the progress achieved to this effect.

3. The Committee noted the provisions of Act No. 87-16 of 1 August 1987 to set up and determine the functions and organization of the people's defence. The Committee noted that, by virtue of sections 1 and 3 of the Act, citizens aged between 18 and 60 years inclusive are subject to the obligations of the people's defence set up within the framework of national defence; that, by virtue of section 8, the conditions of service of the people's defence forces in peacetime are set out in regulations; and that by virtue of section 9 respecting economic defence, the people's defence forces participate in the protection of production units and in strengthening the economic capacity of the country. The application of section 9 of the Act is determined by means of regulations.

The Committee noted from the Government's report that regulations on the application of section 9 had not yet been adopted. The Government repeats the same comment in its latest report.

The Committee also requested the Government to supply information on the effect given in practice to section 9 of Act No. 87-16 and observes that the Government's report does not contain the information requested.

The Committee refers to the indications under the preceding points of the present observation on activities carried out in the framework of compulsory service in national defence and once again requests the Government to supply information on the application in practice of section 9 of Act No. 87-16 and to specify what is meant by strengthening the economic capacity of the country in which the people's defence forces must participate.

4. *Freedom of workers to leave their employment.* The Committee noted that section 67 of the model conditions of service for seafarers (Decree No. 88-17 of 13 September 1988) lays down that the employment relationship can in no event be terminated outside the national territory. Section 65 of the above conditions of service lays down a three-month period of notice for hands and supervisors and six months for officers.

The Committee noted that, although section 67 of the conditions of service protects seafarers against dismissal which may result in their being put off the vessel outside the national territory, this provision does not permit seafarers to leave their employment after completion of the period of notice if, at that time, they are not on national territory. The Committee requested the Government to re-examine this provision and to indicate the measures that have been taken to bring it into conformity with the Convention.

The Committee noted that its comments had been transmitted to the relevant departments of the Ministry of Transport with a view to undertaking a re-examination in order to ensure conformity with the Convention. In its latest report, the Government indicates again that the Committee's comments will be taken into account in the revision of the texts governing seafarers.

The Committee trusts that the Government will take the necessary measures to ensure application of the Convention in this respect.

5. The Committee noted that under sections 4 and 5 of Executive Decree No. 91-201 of 25 June 1991 determining the limits and conditions of referral to a security centre, under section 4 of Presidential Decree No. 91-196 proclaiming a state of emergency, the military authorities, which were assigned the powers of the police, could make detention orders against adults whose activities endangered public order and safety or the normal functioning of public services (section 4(1)), through their refusal to comply with a written requisition order issued by the authority exercising the powers of the police and the maintenance of public order, thereby seriously affecting the functioning of the national economy (section 4(6)), or by opposing the execution of a requisition order issued by reason of the state of emergency and the need for services

to be provided by a public or private service (section 4(7)). The period of detention in a security centre was set at 45 days, which could be renewed once (section 5).

The Committee requested the Government to supply information on the application in practice of the provisions of Decree No. 91-201 of 25 June 1991.

The Government has not supplied in its report the information requested.

With reference to the explanations provided in paragraphs 63 to 66 of its 1979 General Survey on the abolition of forced labour, the Committee notes that it should be clear from the legislation itself that the power to exact labour is to be limited to what is strictly required in order to cope with circumstances endangering the existence or well-being of the whole or part of the population.

The Committee again requests the Government to supply information on the effect given in practice to the provisions respecting the requisitioning of workers, in order to enable the Committee to assess their scope.

Austria (ratification: 1960)

The Committee notes the information provided by the Government in its reports received on 1 June 1994 and 23 August 1996.

Article 2, paragraph 2(c), of the Convention. In comments made for several years, the Committee has noted that some of the work done by prisoners was performed in workshops run by private undertakings inside the prisons under arrangements made with the prison authorities, who remain responsible for the supervision with regard to security, while the private employees of the private undertakings concerned direct the prisoners' work with the approval of the prison authorities.

The Committee pointed out that Article 2, paragraph 2(c), requires not merely that prison labour be carried out under the supervision and control of public authorities, but also prohibits a prisoner to be hired to or placed at the disposal of private companies, and that these provisions also apply to workshops run by private undertakings inside the prisons.

In its latest reports the Government, referring to its previous statements, reiterates its view that the conditions of employment of prisoners in so-called "private companies" do not run counter to Article 2, paragraph 2(c), of the Convention. In particular, in the view of the Austrian federal Government, only the performance of work for a commercial enterprise *outside* the institution (on day release) requires the consent of the prisoner concerned, while prisoners who perform work in workshops run by private undertakings inside the prisons are in no way at the disposal of the private entrepreneur, in the absence of any power of disposal on the part of the private entrepreneur over the prisoners. Therefore, the Government considers that there can be no question of such prisoners being "placed at the disposal" of the private entrepreneur within the meaning of Article 2, paragraph 2(c), and that this rules out the deciding factor requiring the consent of the prisoner. The Government adds that in practice, more prisoners are interested in working in private undertakings than there are such jobs available, as this kind of work not only provides the prisoners with a welcome change, but the bonuses paid by private entrepreneurs give them added motivation.

In respect of improvements in pay and social security for working prisoners, the Government reports that an amendment to the Penal Act of 1993 that came into effect on 1 January 1994 has brought a significant increase in working prisoners' pay, which is now up to two and a half times more than it was previously; prisoners have also been included in the unemployment insurance scheme. In the medium term, it is intended to include prisoners in the statutory social insurance schemes, especially as regards sickness and accident insurance. For budgetary reasons this plan cannot be immediately implemented.

The Committee takes due note of these indications. It must recall that Article 2, paragraph 2(c), of the Convention makes no distinction between work outside and inside the prison. Under Article 2, paragraph 2(c), of the Convention, work or service exacted from any person as a consequence of a conviction in a Court of Law is not exempted from the scope of the Convention unless a twofold condition is met, namely "that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations". Thus, the mere fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense with fulfilling the second condition, namely that the person is not "hired to or placed at the disposal of private individuals, companies or associations".

As regards the Government's view that a prisoner whose work is directed by private employees of a private enterprise with the approval of the prison authorities is not "placed at the disposal" of the entrepreneur since the latter has no legal "power of disposal", the Committee has pointed earlier that the provisions of Article 2, paragraph 2(c), are not limited to cases where a legal relationship would come into existence between the prisoner and the undertaking, but cover equally situations where no such legal relationship exists. Furthermore, it should be noted that the prohibition in Article 2, paragraph 2(c), of the Convention is not predicated on the sole concept of "placing at the disposal of" but specifically includes the "hiring to" private individuals, companies or associations. In the view of the Committee, a prisoner is typically "hired to" an undertaking where there is no contractual relationship between the two, while a contract exists between the undertaking and the penal institution under which the penal institution is paid the price of the labour it provides to the undertaking. Significantly, the amount paid to penal institutions under such contracts corresponds to the market value of the labour and bears no relation with the prisoner's own wage, paid by the penal institution.

While Article 2, paragraph 2(c), of the Convention strictly prohibits that prisoners be hired to or placed at the disposal of private undertakings, the Committee has accepted, for the reasons set out in paragraphs 97 to 101 of its General Survey of 1979 on the abolition of forced labour, that schemes existing in certain countries under which prisoners may, particularly during the period preceding their release, voluntarily enter a normal employment relationship with private employers, do not fall within the scope of the Convention. As the Committee has repeatedly pointed out, only work performed in conditions of a free employment relationship can be held compatible with the explicit prohibition in Article 2, paragraph 2(c); this necessarily requires the formal consent of the person concerned and, in the light of the circumstances of that consent, i.e. the basic obligation to perform prison labour and other restrictions on the prisoner's freedom to take up normal employment, there must be further guarantees and safeguards covering the essential elements of a labour relation, such as a level of wages and social security corresponding to a free labour relationship, to remove the employment from the scope of Article 2, paragraph 2(c), which unconditionally prohibits that persons who are under an obligation to perform prison labour be hired to or placed at the disposal of private companies.

The Committee notes with interest the improvements in prisoners' pay and their inclusion in the unemployment insurance scheme. It hopes that their planned inclusion in the statutory sickness and accident insurance scheme will soon be realized. In view of the explanations given above and the Government's indication regarding the prisoners' interest in working for private enterprises and improvements in their pay, the Committee also hopes that the basic conditions of a free employment relationship, i.e. consent of the worker, normal wages (subject to normal deductions and attachment) and full social security coverage will soon be extended to all prisoners working for private enterprises, and that the Government will report on provisions adopted to this end.

Brazil (ratification: 1965)

The Committee notes the detailed information supplied by the Government in its report as well as the discussion which took place at the Conference Committee on the Application of Standards in June 1996.

1. In its previous observation, the Committee requested the Government to supply information regarding the measures taken, at federal level and in the various states, to follow up the recommendations made by the Committee set up by the Governing Body to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution, alleging non-observance by the Government of Brazil of Conventions Nos. 29 and 105 (document GB.264/16/7).

Further to its previous comments and to the conclusions and recommendations in the report of the Committee set up by the Governing Body to examine the representation, the Committee noted that the problems referred to constituted serious violations to Convention No. 29 since thousands of workers were in a situation of complete dependence, in conditions of debt bondage, forcibly prevented from terminating their employment relationship which they entered into under false pretences, which continued in conditions which are not in keeping with the agreements made nor in compliance with the laws of the country, and which, in addition, they cannot terminate without running the risk of suffering ill-treatment, torture, harassment and sometimes death. Furthermore, such a situation is not in conformity with the obligation contained in *Article 1(b)* of the Abolition of Forced Labour Convention (No. 105) that forced labour shall not be used for purposes of economic development. The Committee observed that, despite the action taken at federal level and in some states with a view to eradicating forced labour, there remain considerable shortcomings in the application of Conventions Nos. 29 and 105.

The Committee noted the establishment of the Executive Group for the Abolition of Forced Labour (GERTRAF), instituted by the President of the Republic, for the purpose, as he said, of defining really severe sanctions for anyone who makes Brazilians into slaves.

Article 25 of the Convention

2. In the conclusions of the report on the representation, the Committee observed that the allegations claiming that the proceedings initiated have been slow are well-founded and that few penal sanctions have been imposed on those responsible for the exaction of forced labour. The Committee also observed that the few people who have been convicted of exacting forced labour have been intermediaries or small owners and lease-holders, while the owners of large haciendas or enterprises using the "services" of "third-party" enterprises or individual intermediaries for production activities conducted under conditions of forced labour went unpunished. The Committee observed, moreover, that the phenomenon of "tertiarization" favoured the impunity of those who ultimately benefited most from the practice of forced labour.

The Committee noted that the conclusions relating to the matter of sanctions, according to which "although the Government's response to the allegations shows that it has taken steps to combat forced labour", there is no evidence of compliance with

Article 25 of Convention No. 29 which provides that "The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced".

In this regard, the Government refers in its report to the difficulty of imposing penalties which stems from the fact that legislation has not defined the concept of slave labour of section 149 of the Penal Code; this lack of clarity regarding the meaning of slave labour has, in many cases, prevented the establishment of boundaries between slave labour properly speaking and other forms of labour which, despite being carried out in extremely arduous conditions, do not have the characteristics of slave labour.

Legislative measures

3. With a view to finding a solution to this problem of defining the various situations included in the concept of slave labour, a Bill is being examined by the GERTRAF (Executive Group for the Abolition of Forced Labour); this Bill defines degrading labour as labour which violates human dignity such as occurs in the following situations: slave labour or labour analogous to slave labour; forced labour, except in the situations envisaged in the law; the exaction of services which exceed the physical capabilities of the worker; the exaction of service from employees who are younger than the minimum age laid down in law; work carried out in unhealthy, arduous or dangerous conditions, without means of avoiding them; work carried out in conditions which generally do not comply with labour legislation, particularly the regulations concerning health, hygiene, safety and working hours; work carried out in humiliating conditions or under guard or which gives rise to corporal punishment; work done for wages lower than the minimum legal wage; the exploitation of activities prohibited by the law such as prostitution, gambling, smuggling and organized crime. The first paragraph lays down that characterization of the situations mentioned is independent of the link established between the parties, consideration being given only to the service provided, irrespective of its modalities and designation. Section 2 provides administrative penalties for anyone found responsible for exacting degrading forms of labour, without prejudice to the penal sanctions to which the situations under examination may give rise. The Bill provides that anyone who submits workers to degrading forms of work may not: obtain loans, finance, exemption from interest or similar benefits from official credit institutions and the public administration; take part in bidding at public calls for offers or conclude contracts with public bodies; receive any subsidy, incentive or benefit granted directly or indirectly by the public administration. Section 3 provides for the publication by the Ministry of Labour in the *Official Gazette* of a list of legal and natural persons for the purposes of applying the law.

The Ministry of Labour has also transmitted to the GERTRAF a proposal for a constitutional amendment making it possible to expropriate landowners who use degrading labour.

In connection with the Committee's observations relating to the impunity of enterprises that use a subcontracting system, another Bill, No. 929 of 1995, is before the Congress; it was formulated by the National Forum Against Rural Violence which brings together representatives of the National Confederation of Agricultural Workers (CONTAG), the Pastoral Commission on Land (CPT), the Secretariat of the Ministry of Labour Inspectorate, the Federal Public Ministry and the Public Ministry of Labour, the Commission on Human Rights and Agriculture and the Subcommission on Slave Labour of the Chamber of Deputies, and lays down prison sentences applicable for conduct provided in law, including:

- recruiting workers directly or indirectly from outside the locality in which the work will be performed, retaining from wages the cost of transport, lodging or any advance payment without guaranteeing facilities for returning to the place of origin (section 2);
- transporting workers in violation of legal regulations, thereby placing workers' life or health in danger (section 3);
- forcing workers by means of trickery *(engaño)*, or through physical or psychological coercion, to work or to remain working in an enterprise or activity of whatever nature. The retention of documents, lack of a written contract or entry in the register and signing of blank documents are all considered trickery (section 6);
- maintaining workers in a state of slavery or conditions analogous to slavery, as well as selling, buying or taking part in transactions whose purpose is to force people to work in a state of slavery or an analogous condition.

The penalties provided are increased if the victims are minors, pregnant women, indigenous people or mentally deficient or insane.

In its report, the Government indicate that GERTRAF is studying the possibility of merging the two texts mentioned above into a single Bill.

Inspection

4. The Committee requested the Government to supply information on the measures taken to reinforce the inspection system and to ensure the systematic and diligent investigation of complaints of forced labour.

The Committee notes Ministerial Decree *(Portaría)* No. MTb 369 of 29 March 1996, supplied by the Government, which establishes six regional coordination bodies linked to the national coordination body and directed by the National Inspection Secretariat. According to the Government, the adoption of this regulation has allowed a process of decentralization of the Flying Inspection Service to provide greater flexibility and efficiency in the combat against slave labour.

The Committee notes with interest the information provided in relation to the 83 enterprises inspected in 1995, in different sectors and regions of the country, and the inspections carried out by regional labour delegations in the rural areas of the municipalities of Santa Terezinha (MT), Vila Rica (MT), Ariquemes, Costa Marques, Jamari, Jarú, Ji-Paraná, São Miguel and Montenegro (Rondonia), in the charcoal works in the north of the state of Minas Gerais and Mato Grosso del Sul, in Alagoas, especially in the sugar-cane cutting sector and in Lucas do Río Verde and Tapurah (MT). The Committee also notes with interest the activities of the Special Flying Inspection Group which has resulted in greater effectiveness of the inspection system and of the judicial proceedings initiated on the basis of the inspection reports of this Group. The Committee observes that workers' organizations such as the National Confederation of Agricultural Workers (CONTAG), the Unitarian Central of Workers (CUT) and various regional trade unions have demonstrated their support for the activities of the Special Flying Inspection Group and the persons in charge of it, who have received threats in the performance of their duties.

Slowness of proceedings

5. The Government indicates in its report that the judicial authorities are acting towards punishing cases of use of forced labour, and stresses that, in the search for justice, existing procedures must be followed.

The Committee observes that, according to the detailed information supplied by the Government, numerous trials initiated in 1994, 1993 and some in 1991 are still in progress on this matter. The Committee notes the extreme slowness of the process which, for many legislations, would amount to a denial of justice.

6. The Committee trusts that the Government will continue to take the necessary measures to ensure that, in conformity with the Convention and with the relevant provisions of national legislation, penal sanctions are imposed on anyone declared responsible for the exaction of forced labour, and that it will supply copies of the judicial decisions handed down.

The Committee also requests the Government to supply information regarding the activities carried out within the integrated programme for the repression of forced labour, under GERTRAF, and in regard to the measures taken to speed up the procedures in pending cases.

The Committee hopes that the Bills at present under examination will lead to the speedy adoption of an instrument which makes it possible to clarify the various concepts of slave labour and forced or degrading labour, and that the Government will supply a copy of the texts once they have been adopted.

Bulgaria (ratification: 1932)

Further to its previous comments, the Committee notes the adoption on 13 December 1995 of the Law on the Defence and Armed Forces, which entered into force on 27 February 1996.

It notes with satisfaction that section 128(1) of the Law, concerning the conditions for termination of the service of career members of the armed forces, provides for their right to leave the service at their own request by giving six months' notice.

It also notes with satisfaction that section 111(1) of the above-mentioned Law provides for the limitation of compulsory military service to work of a purely military character.

The Committee is raising certain questions in this connection in a request addressed directly to the Government.

Burundi (ratification: 1963)

The Committee notes that no report has been received from the Government.

In its previous comments, the Committee noted the information provided by the Government in June 1993 to the effect that the process of adapting and harmonizing legislation with the Convention was continuing; a technical file on this subject, of which the Government supplied a copy, was submitted in March 1993 by the Minister of Labour to the Minister of the Interior. The Committee noted that according to this file the draft texts for repealing the provisions concerned had already been prepared.

The Committee noted that in its report received in 1994 the Government appealed for comprehension by the ILO supervisory bodies of the fact that the approaches to the competent services of the Ministries of Justice and of the Interior are not yet complete as political events have not allowed the consultations initiated by the Ministry of Labour to continue normally. Nevertheless, the Government promised to make every effort to ensure speedy completion as soon as the political and administrative situation in the country has returned to normal.

The Committee has taken due note of this commitment. It hopes that the Government will soon be in a position to supply information on the specific measures it has adopted on the following points, raised in previous comments:

1. In its previous comments concerning Ordinances Nos. 710/275 and 710/276, establishing obligations respecting the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops, the Committee emphasized the need to set out in the law the voluntary nature of agricultural work.

The Committee notes the Government's statement in the above note that measures to repeal these Ordinances should be envisaged in the very short term. The Committee requests the Government to supply the texts to repeal the above Ordinances, once they have been adopted.

2. The Committee referred to certain texts relating to compulsory cultivation, porterage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953, Decree of 10 May 1957) and recommended that they be formally repealed.

The Committee noted the Government's statement that explicit measures to repeal the above texts are justified, principally due to their colonial nature and the fact that they have fallen into abeyance, and that measures have been undertaken with a view to repealing them.

The Committee notes that the file supplied by the Government confirms this intention. The Committee requests the Government to supply a copy of the texts which are adopted for this purpose.

3. The Committee noted that Legislative Decree No. 1/16 of 29 May 1979 establishes the obligation, under penalty of sanctions, to perform community development work.

The Committee notes that the above file recommends that the text in question be repealed and be replaced by the relevant provisions of Legislative Decree No. 1/11 of 8 April 1989 to reorganize communal administration. The Committee requests the Government to supply information on the provisions adopted in this respect.

4. With reference to sections 340 and 341 of the Penal Code, which establish sanctions for vagrancy and begging, and to its previous comments, the Committee notes that an opinion has been requested from the Ministry of the Interior on this subject. The Committee requests the Government to supply information concerning this opinion and on the programme of vocational rehabilitation which the Government considers should serve to avoid vagrancy and begging by assisting persons without employment. The Committee notes Ordinances Nos. 660/161 of 1991, 660/351/91 and 660/086/92, the texts of which were supplied by the Government.

Chad (ratification: 1960)

1. For more than 20 years, the Committee has been referring to the provisions of section 982 (former 260bis) of the General Code of Direct Taxes, empowering the authorities to exact labour for the recovery of taxes.

The Committee notes from the Government's report that this provision has still not been repealed despite the reiterated statements of the Government to this effect. It hopes that the Government will take the necessary measures in the very near future to ensure compliance with the Convention on this point.

2. The Committee notes that the Ministry of Territorial Administration was seized with the issue of amending or repealing the provision of section 2 of Act No. 14 of 13 November 1959, empowering the authorities to exact forced labour for work of public interest from persons subjected to restrictions as to residence, following completion of a sentence. The Committee expresses again the hope that the Government will be able to report progress on this matter in the near future.

3. From the information communicated by the Government, the Committee noted that the provisions providing for the assignment of conscripts to work of general interest were repealed by Ordinance No. 006 PR-92 of 28 April 1992 and asked the Government to send it a copy of the text. In its latest report, the Government indicates that a copy

of the text will be sent later. The Committee hopes that it will soon be made available so as to enable the Committee to ascertain compliance with the Convention on this point.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

Côte d'Ivoire (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation as follows:

> In its previous comments, the Committe referred to sections 24, 77 and 82 of Decree No. 69-189 of 14 May 1969 (issued under sections 680 and 683 of the Code of Criminal Procedure) under which prison labour may be hired out to private persons.
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> In response to the Government's reference to the system of "semi-freedom", this Committee noted that this system is governed by sections 25, 83 and 87 of Decree No. 69-189 and allows prisoners to work for private enterprises under the terms of employment contracts which have been freely concluded by them with their employer and under the normal conditions of work as regards, for example, occupational accidents. This is not the case of prisoners governed by sections 24, 77 and 82 of the Decree.
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> The Committee noted that the Convention, in *Article 2, paragraph 2(c)*, expressly prohibits persons, from whom work is exacted as a consequence of a conviction in a court of law, from being placed at the disposal of private individuals, companies or associations. Only work performed under the conditions of a free employment relationship can be held to be compatible with this prohibition; this necessarily requires the formal consent of the person concerned and, in the light of the circumstances in which this consent is given, guarantees and safeguards in respect to wages and social security which make it possible to consider that it is a real free employment relationship.
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> The Committee noted from the information in the Government's report received in 1993 that the Minister of Justice plans to submit to the Council of Ministers draft amendments to the provisions of the above-mentioned Decree respecting prison labour which will bring them into closer conformity with the Convention. It hopes that the Government will provide information on the provisions adopted to bring the legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Germany (ratification: 1956)

Article 2, paragraph 2(c), of the Convention. The Committee notes the information supplied by the Government in its report received 6 August 1996 on the application of the Convention. It also has noted a request dated 24 April 1996 by the Second Chamber of the Federal Constitutional Court, asking the Committee to explain in detail why an obligation imposed on prisoners to work, for a wage of approximately 1.50 DM per hour, without their consent, in workshops established by private enterprises within prisons violates Article 2, paragraph 2(c), of the Convention.

The Committee recalls that under Article 2, paragraph 2(c), of the Convention, work or service exacted from any person as a consequence of a conviction in a court of law is not exempted from the scope of the Convention unless a twofold condition is met, namely "that the said work or service is carried out under the supervision and control of a public authority **and** that the said person is not hired to or placed at the disposal of private individuals, companies or associations". Thus, the mere fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense with fulfilling the second condition, namely, that the person is not "hired to or placed at the disposal of private individuals, companies or associations".

On this latter issue, the Committee had, in comments addressed to the Government of the Federal Republic of Germany in 1974, taken note of a national court decision which argued that in view of the comprehensive regulation of the working conditions between the penal institution and the employer, and because of the extensive rights of interference and disposal reserved to the institution, there was no "placing at the disposal" of the prisoner within the meaning of Article 2(2)(c), since the enterprise was not entitled to "dispose of" prisoners and deal with them on its own authority. In its comment, the Committee stressed that the provisions of Article 2(2)(c) are not limited to cases where a legal relationship would come into existence between the prisoner and the undertaking, but cover equally situations where no such legal relationship exists. Furthermore, Article 2, paragraph 2(c), makes no distinction between work outside and work inside the prison.

Finally, it should be noted that the prohibition in Article 2(2)(c) of the Convention is not predicated on the sole concept of "placing at the disposal of" but specifically includes the "hiring to" private individuals, companies or associations. In the view of the Committee, a prisoner is typically "hired to" an undertaking where there is no contractual relationship between the two, while a contract exists between the undertaking and the penal institution under which the penal institution is paid the price of the labour it provides to the undertaking. Significantly, the amount paid to penal institutions under such contracts corresponds to the market value of the labour and bears no relation with the prisoner's own wage, paid by the penal institution and fixed in Germany by law at 5 per cent of the national average wage.

While Article 2(2)(c) of the Convention strictly prohibits that prisoners be hired to or placed at the disposal of private undertakings, the Committee has accepted, for the reasons set out in paragraphs 97 to 101 of its General Survey of 1979 on the abolition of forced labour, that schemes existing in certain countries under which prisoners may, particularly during the period preceding their release, voluntarily enter a normal employment relationship with private employers, do not fall within the scope of the Convention. As the Committee has repeatedly pointed out, only work performed in conditions of a free employment relationship can be held compatible with the explicit prohibition in Article 2(2)(c); this necessarily requires the formal consent of the person concerned and, in the light of the circumstances of that consent, i.e. the basic obligation to perform prison labour, and other restrictions on the prisoner's freedom to take up normal employment, there must be further guarantees and safeguards covering the essential elements of a labour relation, such as a level of wages and social security corresponding to a free labour relationship, to remove the employment from the scope of Article 2(2)(c) which unconditionally prohibits that persons who are under an obligation to perform prison labour be hired to or placed at the disposal of private companies.

In comments made for many years on law and practice in Germany, the Committee has observed that contrary to the Convention, prisoners are hired to or placed at the disposal of private enterprises and that the provisions of the Act on the execution of sentences, adopted in 1976, that were to bring practice closer to the Convention, have not been put into effect. Thus, the requirement of the prisoner's formal consent to be employed in a workshop run by a private enterprise, laid down in section 41(3) of the 1976 Act which was to enter into force on 1 January 1982, was suspended by section 22 of the Second Act to improve the budget structure, of 22 December 1981; the 1976 Act also recognizes the prisoner's right to wages, but a provision for increases above the level initially fixed at 5 per cent of the national average wage of wage-earners and salaried employees was not given effect; finally, legislation which was to extend sickness and old-age insurance to prison labour was not adopted.

The Committee notes with interest from the Government's latest report that a draft Fourth Act to amend the Act on the execution of sentences, issued by the Ministry of Justice on 10 April 1996, provides for the entry into force of the suspended section 41(3) of the 1976 Act that requires the prisoner's formal consent to being employed in a workshop run by a private enterprise. It notes that the draft is to be submitted before the end of the year to Parliament, if the Federal Cabinet agrees.

The Committee further notes that another draft law, referred to by the Government in its previous report, that was to regulate the execution of sentences imposed on young offenders and which provided in section 42(2) for the formal consent of the young prisoners to being employed in workshops run by private enterprises, has not met with consensus on fundamental issues but is still being promoted by the Government.

The Committee hopes that the Government will soon be in a position to report that section 41(3) of the 1976 Act on the execution of sentences, which requires the formal consent of the person concerned to working in privately run workshops, will at last be brought into force; that effective and rapid measures will also be taken to implement the provision in section 198(3) of the 1976 Act for the inclusion of prisoners in the health and pension insurance schemes; and that their wages, which have remained fixed for the last 20 years at 5 per cent of the national average, although that percentage was to be progressively raised as from 31 December 1980, will be brought without further delay to the level warranted by their work for private undertakings; it being understood that all wages are subject to deductions and attachment within the limits prescribed by national legislation.

Honduras (ratification: 1957)

With reference to the comments it has been making for some years concerning the non-military work that conscripts can be required to perform during their compulsory national service, the Committee notes with satisfaction that article 276 of the national Constitution has been amended and, in its new form, provides that, in time of peace, military service shall be voluntary.

Jamaica (ratification: 1962)

In previous comments, the Committee noted that under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner, or in pursuance of special rules.

The Committee notes from the Government's report that in practice, no inmate is hired or placed at the disposal of private individuals, companies or associations.

Referring to the explanations provided in paragraphs 97 to 101 of its General Survey of 1979 on the abolition of forced labour, the Committee hopes that on the occasion of a future amendment of the Rules, section 155(2) will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so under the conditions of a freely accepted employment relation, with their formal consent and subject to guarantees regarding the payment of normal wages, etc., and that in the meantime, the Government will report on any changes in the Rules or in the practice indicated.

Japan (ratification: 1932)

The Committee has noted the information supplied by the Government in reply to earlier comments in its reports dated 31 May 1996 and 30 October 1996, as well as the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in a communication dated 30 September 1996, a copy of which was transmitted to the Government on 14 October 1996.

In its previous observation, the Committee took note of observations of the Osaka Fu Special English Teachers' Union (OFSET) dated 12 June 1995 concerning the application of the Convention during the years prior to the Second World War and during the war. The allegations referred to gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations", and OFSET asked for appropriate compensation to be made.

The Committee had noted that the abuses referred to fell within the absolute prohibitions contained in the Convention. The Committee further considered that such unacceptable abuses should give rise to appropriate compensation, since the Convention had provided, even for forms of compulsory service that could be tolerated under Article 1(2) during a transitional period after its coming into force, that the persons called up for such service were to be paid compensation and entitled to disability pensions under Articles 14 and 15.

The Committee had, however, noted that under the Convention and the Committee's terms of reference, it did not have the power to order the relief sought. This relief could be given only by the Government and, in view of the time that had elapsed, the Committee expressed the hope that the Government would give proper consideration to the matter expeditiously.

In its report dated 31 May 1996, the Government indicates that, irrespective of whether or not there was a violation of the Convention, regarding the issues of reparations and/or settlement of claims relating to the war, including those of former wartime "comfort women", Japan has sincerely fulfilled its obligations according to the relevant international agreements and, therefore, the issues have been legally settled between Japan and the parties to those agreements.

The Government indicates that it has been expressing its feeling of apologies and remorse on the issue of wartime "comfort women". As a way of demonstrating such feelings, the Government has been working to face squarely the facts of history, including the issue of wartime "comfort women", in order to ensure that they are properly conveyed to future generations and thus promote better mutual understanding with the countries and areas concerned. In this context, the Government has inaugurated a "Peace, Friendship and Exchange Initiative".

In addition, the Government reports that it has been providing its maximum support to the Asian Women's Fund, which was established with the aim of achieving the atonement of the Japanese people for former wartime "comfort women" and protecting women of today from menaces to the honour and dignity of women in full cooperation with the Japanese people at large including both employers and workers. The Government states that, through these efforts, Japan has been sincerely addressing the issue of wartime "comfort women". The Committee also notes that in its comments on the application of the Convention, the Japanese Trade Union Confederation (JTUC-RENGO) considers that these measures, in which it has been actively participating, could constitute significant progress for the compensation of the victims, if carried out smoothly.

In its report of 31 May 1996, the Government further states that the Committee's observation was based solely on the letter dated 12 June 1995 from the Osaka Fu Special English Teachers' Union (OFSET) and that the Government was not given appropriate notice to comment on that letter, contrary to established practice. Also prior to the submission of the letter by OFSET, a separate representation had already been made in March 1995 by the Federation of Korean Trade Unions (FKTU) to the International Labour Office under article 24 of the ILO Constitution regarding the same issue, and the Government considers that the Committee's observation was made while the examination of the separate representation was in progress.

The Committee has taken due note of these indications. As regards the representation made on 20 March 1995 under article 24 of the ILO Constitution by the FKTU, the Committee notes that the ILO Governing Body did not examine the substance of the representation, nor take a decision on its receivability by the time the FKTU withdrew the representation by letter of 30 May 1996.

As regards the question of whether or not there was a violation of the Convention, the Committee also has noted the discussion that took place at the 48th Session of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in August 1996 on the issue of systematic rape, sexual slavery and slavery-like practices during wartime. During the discussion, a question was raised regarding the relevance of the Convention to the issue of wartime "comfort women" in the light of the exemptions in Article 2 of the Convention.

In this regard, the Committee refers to the explanations provided in paragraph 36 of its General Survey of 1979 on the abolition of forced labour concerning the exemption made in Article 2(2)(d) of the Convention for "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population". The Committee has pointed out that the concept of emergency — as indicated by the enumeration of examples in the Convention — involves a sudden, unforeseen happening calling for instant counter-measures. To respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. In the same manner as Article 2(2)(a) of the Convention exempts from its scope "work exacted in virtue of compulsory military service laws" only "for work of a purely military character", Article 2(2)(d) concerning emergencies is no blanket licence for imposing — on the occasion of war, fire or earthquake — any kind of compulsory service but can only be invoked for service that is strictly required to counter an imminent danger to the population.

The Committee concludes that the present case does not fall within the exemptions contained in Article 2(2)(d) and 2(2)(a) of the Convention, and clearly therefore there was violation of the Convention by Japan.

The Committee recalls that, under Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and strictly enforced. The Committee notes that, under sections 176 and 177 of the Penal Code of Japan (Act No. 45 of 24 April 1907) indecency through compulsion and rape are punishable offences.

The Committee has taken note of the detailed information supplied by the Government in its report of 30 October 1996 on measures it has taken to express its apologies and remorse to the "wartime comfort women" and to support the whole operational cost of, and provide all possible assistance to, the "Asian Women's Fund" set up to offer atonement money to the former "comfort women", as well as medical and welfare support through the use of governmental resources. The Committee trusts that the Government will continue to take its responsibility for the measures necessary to meet the expectations of the victims and will provide information on further action taken.

Liberia (ratification: 1931)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

> 1. *Penal sanctions for illegal exaction of forced labour.* Referring to its previous comments the Committee recalls that under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence with penalties which should be really adequate and strictly enforced. The Committee trusts that the necessary legislation will be enacted.
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> 2. *Local public works.* In previous observations, the Committee noted that, notwithstanding the repeal in 1962 of provisions for the exaction of forced labour for public works contained in the Revised Laws and Administrative Regulations for Governing the Hinterland, 1949, continued use had been made of such powers for carrying out local development works through self-help projects. The Committee noted that according to the annual report of the Ministry of Local Government, Rural Development and Urban Reconstruction for 1981, 75 per cent of rural development projects visited during a nationwide inspection tour were funded through self-help and it requested the Government to provide a copy of the report on the inspection tour and any similar report.
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> The Committee hopes that the legislative provisions to be adopted with a view to giving effect to the requirements of Article 25 of the Convention will ensure that any exaction of labour in connection with local development works can be the subject of effective penalties.
>
> 3. *Enforcement of the prohibition of forced or compulsory labour.* In previous observations, the Committee pointed out that, under *Articles 24 and 25 of the Convention*, the Government was under an obligation to ensure the strict observance of the prohibition of forced or compulsory labour. It stressed the importance, in this connection, of measures to ensure adequate labour inspection, particularly in non-concessionary agricultural undertakings and in relation to Chiefs. The Committee hopes the next report will contain further information in this respect.

The Committee hopes that the Government will make every effort to take the necessary action.

Myanmar (ratification: 1955)

Further to its previous comments concerning the observance of the Convention by Myanmar, the Committee has taken note of the discussion that took place in June 1996, at the Conference Committee, which noted the Government's persistent failure to implement the Convention. The Committee notes that a progress report on measures taken by the Government to abolish recourse to forced labour was received from the Government on 18 October 1996. The Committee further notes that by letter dated 20 June 1996 addressed to the Director-General of the ILO, 25 Workers' delegates to the International Labour Conference presented a complaint under article 26 of the Constitution against the Government of Myanmar for non-observance of the Convention, that a supplementary communication from the complainants was received on 31 October

1996, and that the Governing Body of the ILO, at its 267th Session in November 1996, decided that the Government of Myanmar should be requested by the Director-General to communicate its observations on the complaint by 31 January 1997.

In the circumstances, and pending consideration of the complaint made under article 26 of the Constitution, the Committee defers its examination of the observance of the Convention by Myanmar.

Netherlands (ratification: 1933)

1. *Article 2(2)(a) of the Convention.* In its previous observation, the Committee noted a communication from the Netherlands Trade Union Confederation (FNV) dated 18 August 1995 alleging the use of conscripts for non-military activities. The Committee notes from the Government's report that by a letter of 19 December 1995 from the State Secretary of Defence, the general Association of Dutch Servicemen and Women (AVNM) was informed of the voluntary nature of assignments of conscripts to assist at non-military events, and that at the request of the Association of Conscripts (VVDM), the FNV's communication to the ILO regarding the deployment of conscripts for non-military tasks was discussed by the Consultative Committee for Defence on 21 September 1995, when it was agreed that the position of conscripts would be reviewed in the light of the Convention. The Committee further notes with interest from the Government's report that compulsory attendance of the national service will end on 1 January 1997; the Committee looks forward to learning of the provisions adopted to this end.

2. In earlier comments, the Committee referred to section 6 of the Extraordinary (Employment Relations) Decree, 1945, under which a worker is required to obtain approval for the termination of his employment. The Committee noted that a Bill to repeal this requirement was presented to Parliament on 15 March 1990. It also noted the Government's indication that if the required legislative amendment took too much time, it would consider the possibility of issuing guidelines to the regional employment offices in order to facilitate the termination of employment by workers on their own request. In the absence of further information on any progress made in this regard, the Committee again expresses the hope that the necessary measures will at last be taken to repeal section 6 of the Extraordinary Decree of 1945, and that the Government will soon be in a position to report on the provisions adopted to this end.

Pakistan (ratification: 1957)

1. Further to its previous observations, the Committee notes the Government's latest report on measures taken to ensure the observance of the Convention. The Committee also has taken note of the discussion on the issues raised in its previous observation that took place in the Conference Committee on the Application of Standards in June 1996, and of the observation on the application of the Convention made by the New Zealand Council of Trade Unions (NZCTU) in a communication dated 18 June 1996, which included a 1996 report by Anti-Slavery International on debt bondage in Pakistan entitled "This menace of bonded labour", and was transmitted for comments to the Government on 26 June 1996. The Government has not replied to these observations. Finally, the Committee also has noted the Report of the Working Group on Contemporary Forms of Slavery of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 21st Session (UN document E/CN.4/Sub.2/1996/24 dated 19 July 1996).

I. Bonded labour

Magnitude of the problem

2. In earlier comments, the Committee noted allegations brought before the United Nations that 20 million persons worked as bonded labourers, 7 million of whom were children. The Committee noted the Government's indication that these figures were unrealistic, an appreciation shared by the All Pakistan Federation of Trade Unions. While comparing the alleged numbers with statistical data concerning the labour force and total population of Pakistan, the Government had not put forth any figures of its own concerning the numbers of bonded labourers. However, the Committee noted from the country paper submitted by the Government to the Asian Regional Seminar on Children in Bondage (Islamabad, November 1992) that in Pakistan child labour mostly persisted because of poverty, lack of public awareness, lack of education facilities and parents' debt bondage. In areas where parents (being peasants/labourers) are forced to provide labour services to landlords/employers, their children are frequently trapped in debt bondage. Often, the parents are given a loan to meet some urgent needs. The debtor has then to repay by working. In practice, the debt does not decrease; it even climbs upwards. The whole family becomes permanently enslaved and the money-lender claims repayment from succeeding generations. Thus children are usually pledged as workers in part payment of debt. Children can also be enslaved on their own. Parents may send them to work in the house of a landlord or moneylender. These children may stay for many years, not knowing how long they must work, or even the size of the debt they are paying off. The Committee further noted the observation by the All Pakistan Federation of Trade Unions in its communication dated 13 October 1994 that persons are subjected to forced labour under the bonded labour system in rural and less developed areas by the feudal lords but also in some coal mines and brick kilns.

3. The Committee notes from the report by Anti-Slavery International communicated by the NZCTU in June 1996 the allegation that:

> Over the past two decades, bonded labour in Pakistan has been most notorious in the brick kiln industry. This has grown rapidly in recent decades, with brick kilns springing up in large numbers as towns have expanded. In the last few years, the involvement of bonded child labourers in producing hand-knotted carpets for export has also received considerable publicity outside Pakistan. There are many other sectors of employment in which bonded labour has been the norm rather than the exception. Along with child labour, bonded labour is prevalent in the "informal" industrial sector. It is notable in agriculture, where landless workers are tied to landowners both by debts and by a form of serfdom. It is also reported among fishermen.

Visibility and perception of the problem

4. In its report received in November 1995, the Government, assessing the extent of the problem of bonded child labour, had pointed out that the cases of bonded child labour are not visible. As the Committee noted in its report to the 83rd (1996) Session of the Conference, lack of visibility or of perception appears to be more generally a difficulty in dealing with the problem of bonded labour, a difficulty not so far overcome by established machinery.

Statutory instruments and machinery to deal with bonded labour

5. In the report on debt bondage in Pakistan made by Anti-Slavery International and communicated by the NZCTU in June 1996, legislative and administrative developments are commented upon as follows:

(a) The *Bhatta Mazdoor Mohaz (BMM)*, Brick Kiln Workers' Union, was formed in 1967. Its campaign focused initially on winning basic workers' rights by insisting that brick kiln workers were indeed "workers" as defined by Pakistan's Factory Act of 1934. In 1988 the movement which had started with brick kiln workers was extended to incorporate all other bonded labourers, with the establishment of the Bonded Labour Liberation Front (BLLF). However, the concerns of the brick kiln workers remained at the centre of the BLLF's activities. In 1988 a petition from a group of brick kiln workers led to an all-important ruling by the Supreme Court which, drawing on article 11 of the Constitution, pronounced bonded labour unconstitutional and banned it. The ruling obliged the Government to change the law. A draft bill prepared in 1989 eventually became law in March 1992 as the Bonded Labour System (Abolition) Act.

(b) The 1992 Act was initially applauded by human rights activists and campaigners against bonded labour in Pakistan. It abolished the "bonded labour system", that is the practices and traditions associated with *peshgi*, in particular the expectation that anyone who had accepted an advance was obliged to work until it was paid off (section 4 of the Act). It stated that anyone working as a bonded labourer was no longer under an obligation to repay any part of their bonded debt (section 6). It introduced a punishment (either a fine or two to five years' imprisonment or both) for anyone who enforced a bonded debt in the future by making a debtor work for them (section 11), and the same penalty for anyone making a member of their own family work as a bonded labourer (for example, parents who accept a loan in return for pledging their child to work for someone else). In these respects the new Act did not go much further than previous laws, such as the 1933 Act banning the pledging of children, which had failed in their objectives and fallen into abeyance.

(c) However, following the example of a 1976 law against bonded labour in a neighbouring country, the new Act also included provisions which were intended to ensure that it was implemented. Under section 9, the Government was to confer on district magistrates the power to "ensure that the provisions of the Act are properly carried out", in particular to "try and promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer" (section 10). District magistrates, in practice the government-appointed heads of district-level administrations, were given key responsibilities both to investigate whether there were bonded labourers working in the area for which they were responsible, and, if there were, to take action to guarantee their release and rehabilitation.

(d) Again modelled on the same example, section 15 of the Act provided for the establishment of "vigilance committees" in every district in the country to support the district magistrate and district administration in their efforts to identify, free and rehabilitate bonded labourers. Composed of prominent people in each district, both government officials and others such as lawyers and journalists, the committees are supposed to advise on the application of the law generally, and in particular to help in the rehabilitation of freed bonded labourers and provide them with assistance. The Act provides for vigilance committees to include "representatives of the district administration, bar associations, press, recognized social services and labour departments of the federal and provincial Governments." In these respects then, the 1992 Act was significantly more proactive than any previous legislation against debt bondage involving either adults or children in Pakistan. If implemented, the new law would provide a framework for action at local level to eradicate this form of human rights violation and to prevent its re-establishment.

(e) According to the same report, for three years after the adoption of the Bonded Labour System (Abolition) Act, the Government took no steps to enforce the Act. However, in July 1995 the federal Government (in the form of the Ministry of Labour, Manpower and Overseas Pakistanis) issued a set of rules: these were provided for by section 21 of the 1992 Act "for carrying out the purposes" of the Act. This was the first of a set of critical steps which the central Government had to take to ensure that the law against bonded labour was enforced. In Pakistan, the publication of the rules in the *Government Gazette* did not attract public attention, However, the fact that they were issued means that at provincial and district level, officials can start enforcing some of the provisions of the 1992 Act if they want to.

(f) The July 1995 rules instruct provincial Governments to delegate to district magistrates some of the powers contained in the Bonded Labour System (Abolition) Act, in particular the power to carry out inspections of places where bonded labourers are suspected to be working and other investigations into reports of bonded labour (Rule 4). They also instruct provincial governments to tell district magistrates to set up vigilance committees under the terms of section 15 of the 1992 Act (rule 6).

(g) In contrast to the Act itself, the rules are much more specific about who should be a member of vigilance committees, and rule 6 identifies 18 categories of persons to belong to each committee. Most are closely linked to the authorities themselves, such as a retired judge, a senior police officer, a member of the Provincial Assembly, and representatives of government departments dealing with labour, agriculture and education. However, there is also provision for representatives of a "recognized body of workers" (a trade union), and of "a registered or recognized NGO" (non-governmental organization) working for the protection of human rights and also for a journalist with "experience of working in the field of human rights". Normally such individuals could be expected to be quite independent of the local authorities controlling a district, but this is not guaranteed by the rules, as they provide for these individuals to be nominated by local or central government officials. Furthermore, the provision that there should be only one representative of a trade union or other organization representing workers means that the local elite are intended to completely dominate each vigilance committee.

(h) In contrast to the July 1995 rules, adopted in Pakistan under the 1992 Act, the rules governing the implementation of the corresponding legislation made in 1976 in a neighbouring country not only contained details on vigilance committee membership but also specified how to implement the new law by issuing release certificates to freed bonded labourers and by keeping a register containing personal details of all those released. They also gave guidance on the crucial process of rehabilitation, without which most released bonded labourers would remain under such pressure that they would be likely to take new loans and return to bondage within a short time.

(i) The shortcomings of the July 1995 rules lie particularly in their weak provisions for the rehabilitation of released bonded labourers. Rule 9 concerns the "establishment of the fund" which is "for the rehabilitation and welfare of the freed bonded labourer".. This is to consist of initial contributions which the federal or provincial Governments may make, along with any contributions by national or international organizations. In practice, the Government does not seem to have allocated any money in recent budgets for this use, and it seems that in practice no resources have been identified to pay for any form of rehabilitation — in contrast to the specific sums of money, albeit limited, which have been provided for the rehabilitation of some child labourers. It is also notable that, in contrast to the rules issued elsewhere, the rules issued in Pakistan in 1995 do not give district officials any guidance about release procedures nor do they provide for any formal process for registering the personal details of bonded labourers being freed, together with any sums of money they receive for rehabilitation. This means that no statistics are being collected on how many releases or cases of rehabilitation are occurring; therefore the Government has no accurate information to measure the success or failure of the law in terms of numbers of releases and cases of rehabilitation.

(j) The report concludes that if implemented at district level, the rules issued in July 1995 could help secure the release of significant numbers of bonded labourers. However, by issuing the rules with no publicity, and at a time when the Bonded Labour Liberation

> Front (BLLF), the principal non-governmental organization representing bonded labourers was being subjected to a series of repressive measures by the Government's own security agencies, the authorities effectively ensured that officials at provincial and district level would do little or nothing to implement them.

The Committee takes due note of these indications. It notes that the allegations of poor publicity and attention given to the law by the authorities correspond to the absence of any information on the July 1995 rules from the Government's report of November 1995 and statement to the Conference of June 1996, as well as from the Government's latest report on the observance of the Convention, which covers the period 1 July 1994 to 30 June 1996.

6. *Challenges to the law.* According to the report on debt bondage in Pakistan made by Anti-Slavery International and communicated by the NZCTU in June 1996, the 1992 law abolishing bonded labour was swiftly condemned by businessmen employing bonded labourers, who stood to lose money they had advanced in *peshgi* loan, and chose to challenge the new law before the country's Shariat (Islamic law) courts, claiming that the provisions freeing bonded labourers from their obligation to repay loans (contained in sections 6 and 8 of the Act) were "un-Islamic". One of the first challenges to the new law was filed with the Federal Shariat Court in September 1992 by a brick kiln owner, Ghulam Khana Bangash. The Court is not known to have yet issued a definitive ruling in response to this or other challenges, and employers take advantage of this to allege that the law does not yet have to be implemented. The Committee hopes that the Government will comment on these allegations and send a copy of the court ruling as soon as it is issued.

Fact-finding and law enforcement practice

7. In its reports for 1992-94 on the application of the Convention, the Government indicated that only one case of bonded labour was found, in the Punjab Province, and that the management was stated to have been prosecuted. In the "Consolidated position of the implementation of the Employment of Children Act, 1991, and the Bonded Labour System (Abolition) Act, 1992", received from the Government in November 1995, the number of inspections, prosecutions and convictions given for the Bonded Labour System (Abolition) Act, 1992, are all nil for each of the four provinces. It was stated by way of explanation that reports furnished by district magistrates from Baluchistan showed no instance of bonded labour in the province and that vigilance committees headed by the deputy commissioners in the districts of North-West Frontier Province (NWFP) and Sindh had detected no case of bonded labour; for Punjab, it was explained that in accordance with section 15 of the Act, vigilance committees had been formed in almost all the districts of Punjab, that the Act mainly envisaged an advisory and supervisory role for the vigilance committees, and "that it is a matter of general observation that aggrieved persons do not approach the vigilance committees but instead they prefer to invoke the jurisdiction of the High Court for prompt relief". In this regard, the Committee pointed out in its previous observation that under section 15 of the Act, vigilance committees to be set up at the district level are not only to advise the district administration on matters relating to the effective implementation of the law, but also to ensure its implementation in a proper manner and to provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law; it did not appear that this had so far been done.

8. The Committee notes the indication given by a Government representative in 1996 to the Conference Committee that, while only one case of bonded labour had been identified for the whole country between 1992 and 1994, since 1995, so-called private

jails had been raided: on 17 November 1995 in the District of Sanghar, where 96 detainees were released and a case under section 11 of the 1992 Act was registered against the offender; another "private" jail in the District of Umerkot was raided twice on 1 June 1995 and 14 January 1996, resulting in the release of 70 detainees. Cases were registered against 11 accused, of which two had been arrested while the remainder obtained bail before arrest from the High Court of Sindh and the Sessions Court, Umerkot. Yet another raid was conducted in the District of Umerkot by the Subdivisional Magistrate and Deputy Superintendent of Police, releasing ten peasant families, and a case had duly been registered against the accused. In the other four cases no evidence of bonded labour could be found on the premises alleged to be housing bonded labourers. The Government representative believed that the above-mentioned efforts by the Government were ample evidence of the Government's serious commitment to come to grips with the problem of children in bondage and with bonded labour. Admitting that the Government had not been able to eliminate the problem fully, he assured that it was moving in the right direction and that results would be seen in a few years.

9. In its latest report, covering the period from 1 July 1994 to 30 June 1996, the Government indicates that the enforceability and effective implementation of the Bonded Labour System (Abolition) Act 1992 is envisaged through the setting up of vigilance committees comprising the elected representatives, members of the bar associations, journalists, district administration and NGOs, and that these committees have already been set up in the Punjab, Sindh, NWFP and Baluchistan. In the provinces, the implementation and enforcement of the Act is entrusted to the district Magistrates, who are also chairmen of the district vigilance committees, are allowed to monitor and report violations and are vigilantly taking care of the implementation of the Act. The Government states that, as a result of the enactment of the Bonded Labour System (Abolition) Act 1992, bonded child labour has also been curbed in principle, wherever it exists, and that the implementation of the Act is being pursued vigorously by the provincial governments. Under the enactment all the four provincial governments have appointed inspectors who visit regularly industrial and commercial undertakings within their jurisdiction for the purpose of securing compliance.

10. The Government adds that the implementation position of the Act as reported by the four provincial governments is as follows: in Punjab, 329 raids were conducted, while the number of labourers recovered was 172. In Sindh, up to August 1996, there were 20 inspections/raids, the number of labourers recovered was 335, 11 cases were registered and 16 persons arrested (all released by the Court), and the number of convictions was nil. For NWFP and Baluchistan, the only indication is that no bonded labour case was reported.

11. The Committee takes due note of these indications. It also notes that the 1996 report on debt bondage in Pakistan made by Anti-Slavery International and communicated by the NZCTU contains the following detailed observations concerning the enforcement of the law.

> (a) In order for the 1992 Bonded Labour System (Abolition) Act to have a substantial impact in Pakistan, the Government had to make its provisions widely known and then empower district magistrates to take action to guarantee the release and rehabilitation of bonded labourers. District magistrates are not, as their title might suggest, members of the judiciary, but are in fact the Government's representatives (deputy commissioners) in the districts where they are based. They take orders from within their own hierarchy and usually wait for instructions to be handed down before initiating any action. Section 9 of the Act requires provincial governments to confer these powers on district magistrates.

However, provincial governments in their turn tend to await instructions from the Federal Government, which was given power to "make rules for carrying out the purposes" of the Act by section 21, but only did so in July 1995. Now that a set of rules has been issued, it is important that the Government should follow up rapidly by instructing district magistrates to transform the rules into action.

(b) District magistrates are not the only officials who are expected to enforce the Act. Section 15 provides for the establishment of vigilance committees "in the prescribed manner". Because there was a three-year delay before the Government indicated "in the prescribed manner" to set up committees, very few were established. There have been reports that in some districts where vigilance committees have been appointed, their members include businessmen who are still employing bonded labourers.

(c) The first substantial evidence of the extent to which the Act was not being implemented came at the end of 1993, when the Supreme Court again inquired into a report of bonded labour, this time in the carpet industry. In November 1993, a lawyer, Anwar Sadiq, accompanied by several foreign human rights activists and a local magistrate, visited a carpet factory near Kasur where 300 children were reported to be working, in order to expose breaches of the law and bring about the children's release. Anwar Sadiq was subsequently subjected to threats and his brother was arrested. In protest at both the employment of children and the harassment of the lawyer, two people in Sweden wrote to Pakistan's Supreme Court to draw the Court's attention to the abuses. As in 1988, the Supreme Court decided to treat the communication as a constitutional petition (Case 3-L of 1993) and required the Kasur district magistrate, the local labour department and the Punjab Social Welfare Department to submit information about what was going on. The responses received at the beginning of 1994 revealed that the 1992 Bonded Labour System (Abolition) Act remained virtually unimplemented: The labour department said that district administrations in Punjab had been instructed in August 1993, 17 months after the Act was passed, to set up vigilance committees. However, the Kasur district magistrate was quite categorical that none had been set up in Kasur. He also observed that the 1992 Act had received little publicity. He said its provisions were consequently unknown and neither employers nor employees were aware that *peshgi* did not have to be repaid. He also questioned the very basis of the 1992 Act, claiming that it did not command popular support. He knew that no court magistrate had been empowered to try offences committed under the Act and that no rules had been prepared about how to implement the Act. He was not ready to take action himself to ensure the release and rehabilitation of bonded labourers as required under section 10 of the Act.

The Punjab Social Welfare Department told the Supreme Court that it was in no way responsible for implementing the law against bonded labour, although the Act requires it to be involved in vigilance committees. The Labour Department indicated that it was concerned primarily with the implementation of the 1991 Employment of Children Act. Although the Supreme Court received this information from officials at the beginning of 1994, it seems to have taken no further action in the case to insist that the authorities enforce the 1992 Act, although it was clear that the law was being disregarded.

(d) In Kasur District, as in others where inquiries were made on behalf of Anti-Slavery International at the beginning of 1995, the head of the local bar association had never heard or been told that the bar Association should be part of a vigilance committee. Other districts where Anti-Slavery International received confirmation during the first half of 1995 that lawyers had no information about the establishment of vigilance committees include Gujrat, Lahore and Sheikhupura Districts.

(e) Elsewhere in the country, there has been even more recent evidence that vigilance committees have not been set up. In North West Frontier Province, the provincial labour department was reported during the first half of 1995 to be convening a committee at provincial level composed of four provincial government officials, 11 representatives of the Brick Kiln Owners' Association and five representatives of the Brick Kiln Workers'

Union. By the end of April 1995 it had not met. At district level, some district magistrates were reported to have convened vigilance committees, but this had evidently been left to the initiative of individuals rather than being done systematically.

(f) The report concludes that:

- Local government officials have not been obliged to implement the Bonded Labour System (Abolition) Act.
- Few vigilance committees have been established in the districts and, when they have been, their composition does not conform either to the letter or to the spirit of the law.
- There is no system for monitoring the occurrence of bonded labour or the number of releases of bonded workers.
- Judges have not been given powers to prosecute employers who continue to offer advances for bonded labour.
- Some 2,000 cases lodged by bonded labourers under the Bonded Labour System (Abolition) Act between March 1992 and early 1995 were turned down by the courts on the grounds that they did not have jurisdiction — because the Government had not implemented sections 9 and 16 of the Bonded Labour System (Abolition) Act. Over the same period, about 250 cases are reported to have been filed by bonded labourers with labour courts, although it is not known how these have progressed.

12. The Committee has taken note of these detailed allegations, which have remained without a reply and are matched by the limited scope and results of concrete action reported by the Government, as reflected in points 7 to 10 above. The Committee recalls the observation on the application of the Convention made by the All Pakistan Federation of United Trade Unions in a communication dated 31 December 1993 (which was transmitted to the Government for comments and also remained without reply) that the feudals of the country had a strong hold over the administrative machinery, which was always used for the protection of the bonded labour system, and whenever any effort was made to eliminate this system, it was strongly resisted. The Committee further notes that in its communication of June 1996, the NZCTU has stressed the Workers' members' concern at the Conference Committee in June 1996 that the Government was putting more energy into attacking those, such as the BLLF, who seek to free bonded labourers, than into implementing the laws which purport to ban such labour.

Action to be taken

13. The Committee notes from the communication made by the NZCTU that, on the basis of the failings noted, the NZCTU concludes with Anti-Slavery International that the following action is required to implement the Bonded Labour System (Abolition) Act:

(a) The central Government should insist that all provincial governments take action to implement sections 9 and 10 of the Act, that is "to confer such powers and impose such duties" on district magistrates as are needed to allow the Act to be carried out.

(b) Central Government should require each provincial government to empower one or more magistrates to try offences committed under the Act, as required by section 16 of the Act.

(c) In order to ensure implementation of the 1992 Act and the 1995 rules, central Government should instruct provincial governments to establish vigilance committees in every district within a specified time limit, and monitor the initial sessions of committees in order to ensure that their meetings take place in practice as well as in theory.

(d) Central Government should ensure that, at provincial level, budgets are established to pay for rehabilitation. Appropriate resources should be made available for such budgets, along with appropriate controls to ensure that resources are not misused.

(e) The rules or other instructions for implementation of the 1992 Act should be revised or supplemented to indicate the following:

   (i) District magistrates should be given guidelines relating to the release of bonded labourers. In particular, the rules should provide for a register to be kept recording the personal details of all bonded labourers who are released, together with details of their rehabilitation. This would allow government at both provincial and national level to monitor the process of releases and issue factual information about the numbers of releases actually taking place.

   (ii) As both the 1992 Act and the 1995 rules indicate who should be members of vigilance committees, and there have nevertheless been reports that some of the committees already set up have included prominent local people who actually employ bonded labour, it would be appropriate for the rules to be revised to indicate that no person who might be employing bonded labourers should be appointed to a vigilance committee.

   (iii) District magistrates and vigilance committees should be given a clearer idea of what actions they are expected to undertake in order to investigate whether any labourers in their district are victims of debt bondage, in particular the minimum actions acceptable. Evidently, this should make clear that it is not sufficient to wait for bonded labourers to register complaints about their status, or simply to ask individual workers if they are bonded or not: in both cases they are likely to feel so intimidated that they do not reveal their bonded status.

   (iv) It should also be made clearer what minimum steps are to be taken by district magistrates or vigilance committees to rehabilitate bonded labourers who are freed (section 10 of the Act says district-level officials "shall as far as practicable, try to promote the welfare of the freed bonded labourer so that he may not have any occasion or reason to contract any further bonded debt").

14. According to the same communication from the NZCTU, supplementary actions required to make the Bonded Labour System (Abolition) Act effective include:

(a) *Publicity*. This did not change with the publication in July 1995 of the rules governing the implementation of the Act, for this appears to have received little publicity or attention from the government officials concerned. It is therefore vital that the Government effectively relaunch the law with a campaign of public information designed to bring it to the attention of employers and employees alike. Many employers of bonded labour do not recognize that they are committing either an offence against the law or an abuse of human rights — indeed, they often say that by giving advances they are giving charity and bringing benefits to those poorer than themselves. The public information campaign must therefore deal with popular attitudes, as well as giving purely technical information about the provisions of law.

(b) *An integrated programme of legal and social action*. Challenges to the 1992 Act before the Shariat Courts should be dealt with rapidly, so that pending cases can no longer be cited as an excuse to delay implementation of the law. Even if the Bonded Labour System (Abolition) Act is implemented fully, a series of programmes should be run at the same time to help those released from bondage, and their families, to develop alternative livelihoods. This is particularly relevant for children, for whom appropriate primary education should be provided. It is clear from experience in other countries that district magistrates and vigilance committees are not likely to be able to meet this challenge without support and funding from the Government.

(c) *Ending harassment and repression of activists.* From the beginning of June 1995 onwards, activists campaigning against bonded labour in Pakistan were victims of a series of arrests and indictments by the authorities, in particular the Federal Investigation Agency (FIA), Pakistan's security agency. The leader of the main organization campaigning against bonded labour, Ehsan Ullah Khan of the Bonded Labour Liberation Front (BLLF), was accused of being a spy for a neighbouring State while he was out of the country and has remained abroad in order to avoid arrest. Whatever the possible reasons or justification for these acts of repression, the public message which the Government conveyed was that campaigning against bonded labour was against the public interest and likely to result in punishment. The Government must now reverse its policy of "punishing the messenger" and commit itself to supporting those in Pakistan who, like the Human Rights Commission of Pakistan and the Bonded Labour Liberation Front, have campaigned publicly for the end of debt bondage.

15. The Committee has taken note of the allegations and conclusions communicated by the NZCTU in its comments on the application of the Convention. It hopes that the Government will supply detailed observations on the allegations made, as well as indications on any action taken or envisaged that would correspond to the recommendations set out in points 13 and 14 above.

16. The Committee again expresses the hope that the necessary measures will be taken to ensure the effective enforcement of the Bonded Labour System (Abolition) Act, 1992, as regards the identification, release and rehabilitation of bonded labourers as well as the strict punishment of offenders, including, as provided for under section 14 of the Act and section 107 of the Penal Code, the punishment of any public officer or other person who, by any act, illegal omission or wilful concealment of a material fact which he is bound to disclose, voluntarily aids or procures an offence to be committed under the Act. The Committee requests the Government to supply full details on the action taken to this effect, on any measures taken under the 1995 rules to effectively include at the district and local levels representatives of trade unions and employers' associations in the machinery, as well as representatives of the National Human Rights Commission, the Bonded Labour Liberation Front and any other non-governmental organizations engaged in the task of assisting the bonded labourers, and on the results obtained, including the numbers of bonded labourers identified, freed and rehabilitated, and details concerning the prosecution, conviction and punishment of offenders, in the cases referred to in points 8 and 10 above and any further cases registered.

II. Child labour beyond bonded labour

17. In its report for the period 1994-96 the Government has supplied detailed information on action taken to deal with the problem of child labour, including the setting up of various specialized committees and administrative bodies; the accomplishment of a national survey of child labour; the commitment to providing primary education to all children: the setting up of 17 multipurpose centres for working children, including 14 at brick kilns, which provide non-formal education, religious education and recreation to a total of 500 children; the launching of a national project for 35 rehabilitation centres for working children; the planning of an awareness-raising campaign, and, last but not least, the initiation, in cooperation with the ILO, of 13 Action Programmes under the International Programme for the Elimination of Child Labour (IPEC) during 1994-95.

18. The Committee has noted these indications with interest. It notes that some of the programmes and projects mentioned by the Government concern children in bondage or in industries with a high incidence of bonded labour. For forms of child labour other

than bonded labour, the Committee had, in its previous observation, raised the question, with regard to Article 2(1) of the Convention, whether, and if so, under what circumstances a minor can be considered to have offered himself "voluntarily" for work or service, whether or when the consent of the parents is needed or even sufficient in this regard, and what are the sanctions for refusal. Referring also to its observation under the Minimum Age (Industry) (Revised) Convention, 1937 (No. 59), the Committee hopes that the Government will soon be in a position to report progress and concrete results for the various programmes and projects aimed at the elimination of child labour.

III. Restrictions on termination of employment

19. The Committee has been commenting for a considerable number of years on the provisions of the Pakistan Essential Services (Maintenance) Act, 1952, rendering punishable with imprisonment of up to one year a person in employment of whatever nature under the federal Government who terminates his employment without the consent of his employer, notwithstanding any express or implied term in his contract providing for termination with notice. These provisions may be extended to other classes of employment (sections 2, 3(1)(b) and explanation 2, section 7(1); section 3). Similar provisions are contained in the West Pakistan Essential Services (Maintenance) Act, 1958, as in force in Baluchistan and the North-West Frontier Province, and in the corresponding Punjab and Sindh Essential Services (Maintenance) Acts of 1958.

20. The Government has repeatedly indicated its intention to amend the provisions of the Pakistan Essential Services (Maintenance) Act so that an employee may terminate his employment in accordance with the express or implied terms of his contract. In its report for the period 1993-94, received 30 May 1995, as well as in its latest report, the Government has stated that the Act is made applicable temporarily to essential employments only for the purpose of securing the defence or security of the country and for the maintenance of supplies and services, essential to the life of the community. The Government adds that the list of essential employments covered under the law is minimum, and that the Government has adopted a policy of constant review and check of this list. In a statement to the Conference Committee in June 1996, a Government representative indicated that the scope of the Essential Services Act had been further reduced. Compared to nine establishments or categories covered in 1995, the Act was applicable at the present in the following categories having a strong bearing on the security of the country and the life of the community: (i) employment in connection with the generation, transmission, distribution and supply of electricity; (ii) employment under the specified oil and gas organizations whose number had been reduced from 17 to nine; (iii) employment under the Pakistan Security Printing Corporation and Security Papers Ltd.; (iv) employment under Kahuta Research Laboratories; (v) employment under the Civil Aviation Authority; (vi) employment under Karachi Electricity Supply Corporation; (vii) Karachi Port Trust and Port Qasim Authority.

21. The Committee has taken due note of these indications. As regards the Government's repeated statement that the Act is made applicable temporarily to limited categories of employment only, the Committee is bound to point out once more that the Essential Services Acts apply *permanently* to all employment of whatever nature under the federal Government, and to all employment under a provincial government or any agency set up by it or a local authority or any service relating to transport or civil defence; *in addition*, they may be applied, by notification of a provincial government, to employment in any educational autonomous body, and by notification of the federal Government for specific and renewable periods of six months each to other employment or classes of employment which the Government considers essential.

22. In its report received 30 May 1995, the Government further stated with regard to employment under the Pakistan Essential Services (Maintenance) Act that, while the right of association in such cases remained intact, only strikes and lockouts were prohibited because the Government felt that if essential services are disrupted, the life of the community as a whole will be in danger. However, in all circumstances, the workers' right to resort to "an appropriate forum (NIRC) for redressal of their grievances" was available to them. The Government added that it had also deliberated to amend the provisions of this law in order to enable an employee to terminate his employment in accordance with expressed or implied terms of employment, but reiterated that the application of this law to some industries was inevitable in view of the sensitivity of their employments. Moreover, this had been done because national interest demanded suitable checks and balances in these cases. The Government nevertheless had decided that the law in question should not in future be extended to any industry unless it was fully warranted and justified. However, the possibility for employees covered by the Essential Services (Maintenance) Act, 1952, to unilaterally terminate their employment and the exclusion of some of the establishments from the application of the Act had been considered by the tripartite Task Force on Labour, which submitted its report to the Cabinet in the light of the views expressed by the workers' and employers' groups. The Cabinet constituted a Cabinet Committee to further examine the report, and the ILO would be informed of developments in the matter. In its most recent report, received 18 months later, the Government repeats the same indications, adding that the recommendations of the task forces are under active consideration and that information on the latest developments will be supplied as and when the new labour policy is announced by the Government.

23. The Committee notes the absence of visible progress in restoring the right of employees covered by the Essential Services (Maintenance) Act, 1952, to unilaterally terminate their employment. As regards the Government's indication that the right of association remains intact and only strikes and lockouts are prohibited, the Committee, referring also to point 3 of its observation on Pakistan under the Abolition of Forced Labour Convention, 1957 (No. 105), must once again point out that even in truly essential services, whose interruption might endanger the life, personal safety or health of persons, the freedom of individual workers to terminate their employment by giving notice of reasonable length remains an inalienable right; under the federal and provincial Essential Services Acts, this right is being denied to a far wider group of employees. The Committee recalls that the Essential Services Acts have been the subject of comments for a great number of years under the Convention, ratified by Pakistan in 1957, and that the Government had assured the Conference Committee in 1989 that the Government had already decided to meet the requirements of the Convention by amending the 1952 Act, and that the proposed amendment was to be submitted to the National Assembly. Recalling also the observation by the All Pakistan Federation of Trade Unions, in its communication dated 13 October 1994, that these laws are required to be abolished in the light of Conventions Nos. 105 and 29, ratified by Pakistan, and noting the firm hope expressed by the Conference Committee in 1996 that the Government would take every measure in the very near future to ensure that both the national and provincial legislation on essential services was amended in order to eliminate restrictions on the freedom of workers to leave their employment, the Committee hopes that this will at last be done and that the Government will soon be in a position to supply a copy of the legislation adopted to this end.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

Paraguay (ratification: 1967)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observations which read as follows:

> *Article 2, paragraph 2(c), of the Convention.* The Committee has been referring for 20 years to section 39 of Act No. 210 of 1970 respecting the prison system, which is contrary to this provision of the Convention since it states that "work shall be compulsory for detainees", although the same Act (section 10) defines as detainees not only convicted persons but also persons subjected to security measures in a prison establishment.
>
> Since 1977 the Government has been referring to a bill to amend section 39 of Act No. 210.
>
> In its previous observation the Committee expressed the hope that the necessary measures would be taken without delay to ensure observance of the Convention on this point on which it has been commenting for so many years, and asked the Government to provide a detailed report on the matter.
>
> In its report received in 1995 the Government states that "there have been no changes in the situation".
>
> The Committee hopes that the Government will not further postpone taking the necessary measures to ensure observance of the Convention.

Spain (ratification: 1932)

In its previous observation, the Committee had requested the Government to take the measures necessary to establish the voluntary character of work by convicts for private enterprises, since this was not clearly established in the Prison Regulations (Royal Decree No. 1202/81).

The Committee takes note of Royal Decree No. 190/96 of 9 February 1996 which approves the new Prison Regulations. Under section 132 of the new Regulations, prison labour of a productive character is a right and a duty of the interned person. Under section 133(1) of the same Regulations, all prisoners have the obligation to work, except those undergoing medical treatment, those suffering a permanent disability, those over 65 years of age, those receiving retirement pensions, pregnant women and convicts who cannot work for reasons of *force majeure*.

In its report, the Government indicates that the work of prisoners is free; that the terms "labour ... is a right and a duty of the interned person" (section 132 of the Prison Regulations) are similar to those used in article 35 of the Spanish Constitution according to which "All Spaniards have the duty to work" and that to read this formulation as meaning forced labour supposes a partial and restrictive interpretation of its literal meaning.

The Committee notes that the Government repeats its former statements to the effect that the work carried out by prisoners is voluntary. It observes, however, that such practice does not correspond to sections 132 and 133(1) of the Prison Regulations, which establish that prison labour is mandatory.

The Committee regrets that the adoption of the new Prison Regulations did not lead to a formal harmonization of the legislation with the requirements of the Convention and hopes that the Government will take the measures necessary to give statutory effect to the practice which, according to the Government, already exists.

The Committee notes the information supplied by the Government concerning the remuneration of productive labour in the special prison labour relationship.

Sri Lanka (ratification: 1950)

The Committee notes that no report has been received from the Government.

Child exploitation

1. In previous comments the Committee referred to allegations of child labour exploitation in domestic service, shops, private coaches, tourist industry and fishing camps (Wadiyas). The Committee noted that article 27, paragraph 13, of the Constitution provides that the State shall promote with special care the interests of children and youth so as to ensure their full physical, mental, moral, religious and social development, to protect them from exploitation and discrimination and that a number of laws have been enacted to protect children. The Committee noted, however, that it was alleged that protective laws were not adequately respected and enforced and that a reason for the abuse of child labour was the lack of deterrent punishment. The Committee noted the Government's indication in its report for the period ending 30 June 1993 and the survey on child employment in the passenger transport annexed to the report. The survey, as it indicates in page 2, was conducted upon receiving allegations made by the press and others to the effect that working children are exploited by private bus owners. The Committee noted that the survey found several instances of exploitative working conditions of child workers. The Committee noted the Government's indication that authorities in charge of child labour have felt a need for introducing new laws with regard to child labour and child abuse. It further noted the Government's indication that action was being taken to introduce new laws and to amend the prevailing laws, to impose severe penalties for the violation of the laws with regard to child labour, child abuse and other matters which come under the purview of the monitoring committee set up by the Children's Charter. The Government further indicated that the Adoption of Children's Ordinance, 1941, could be amended with a view to avoiding child exploitation under the guise of foster care, such as requiring also relatives to register for custody of children under 14 years of age or extending legal responsibilities of a registered guardian to cover also the duty of physical care, protection from violence and education.

The Committee hopes that the Government will supply further information on the progress achieved in its efforts to improve the legislative support to combat child exploitation, as well as to ensure that exaction of forced labour is punished as a penal offence and that the penalties imposed by law are really adequate and strictly enforced.

2. The Committee noted the Government's indication in its report for the period ending 30 June 1993 that the Department of Labour and the Department of Probation and Child-Care Services were the existing machineries for supervision of laws regarding children. Labour offices of the Department of Labour carried out their inspection under the provisions of the Employment of Women, Young Persons and Children Act, No. 47 of 1956, and action was being taken to empower the probation officers of the Department of Probation and Child-Care Services to carry out inspections under the same Act. In view of the comments made by the Jathika Sevaka Sangamaya (National Employees' Union), noted by the Committee in its 1994 observation, to the effect that the non-application of the Convention is mainly due to the shortage of labour inspectors, the Committee hopes that measures will soon be taken to strengthen the labour inspectorate to cover the exploitation of labour, particularly child exploitation.

3. The Committee noted the Government's indication in its report for ther period ending 30 June 1993 that a large-scale campaign was launched to combat child labour on 5 November 1992 and, as a result, the Department of Probation and Child-Care Services received 1,290 complaints under which 50 persons were investigated and others are under investigation. The Committee hopes that the Government will supply

information on the outcome of the continuation of this campaign and particulars of the persons investigated, the penalties imposed and the number of children rescued and rehabilitated.

4. The Committee in its previous observation referred to a series of sources, such as the report on child labour in Sri Lanka, published by the ILO in 1993, and the report on the Asian Regional Seminar on Children in Bondage, which took place in Islamabad on 23-26 November 1993. It noted various allegations made with respect to bonded child labour and exploitation of child domestic servants. As domestic workers are usually not covered by labour inspection, the Committee hopes that the Government will supply information more particularly on measures taken to protect domestic workers from forced labour and to combat child servitude.

Emergency regulations

5. In previous comments the Committee noted that the state of emergency proclaimed on 20 June 1989 under Part II of the Public Security Ordinance (Cap. 40), 1947, had been renewed monthly since that date and remained in force. The Committee noted that under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1989, also still in force, the President might order to require any person to do work or render any service in aid, or in connection with, the national security or the maintenance of essential services. Contravention or failure to comply with the requisition order is an offence and punishable, in addition to any other penalty imposed by the court, by forfeiture of all property. The list of essential services contained in the schedule to Regulations No. 1 of 1989, such as modified subsequently, comprises, inter alia, services, work or labour necessary or to be done in connection with the export of commodities, garments and other export products.

The Committee noted with interest that the Emergency (Maintenance of Exports) Regulations, No. 1 of 1992, which had punished persons intimidating or disrupting manufactures or processes for export was repealed by the Regulation made by the President under section 5 of the Public Security Ordinance (Cap. 40) on 29 September 1992 published in *Gazette Extraordinary* No. 734/8.

However, in light of the continuation of the validity of the Public Security Ordinance as a whole and recalling early comments made by the Ceylon Workers' Congress, alleging large powers given under the Ordinance to officials to require any person to do any work or render any personal services under the menace of penalties, the Committee wishes, once again, to recall that recourse to compulsory labour under emergency powers is to be limited to circumstances which endanger the existence or well being of the whole or part of the population. It should be clear from the legislation itself that the power to exact labour is limited to what is strictly required to cope with such circumstances. The Committee again requests the Government to provide information on measures taken or envisaged to this effect.

6. In previous comments the Committee referred to the Compulsory Public Service Act No. 70 of 1961 imposing on graduates an obligation to perform compulsory public service for up to five years under penalty of a fine for every day's failure to discharge this duty (sections 3(1), 4(1)(c) and 4(5)). The Government, in its latest report, refers to its previous reports in which it had indicated that the Act was not implemented in respect of medical officers and that no enforcement of the provisions of the Act had come to the Government's notice. The Committee noted the Government's indication that there were no reported instances of prosecutions against any graduates under this law. The Committee again expresses the hope that the Government will indicate measures contemplated or adopted to amend or repeal the Compulsory Public Service Act.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sudan (ratification: 1957)

1. The Committee has noted the Government's reply to its observation made in 1994 and the Government's report received 18 October 1996 on the application of the Convention. It also has taken note of the report of the Special Rapporteur on the situation of human rights in the Sudan submitted to the Fifty-second Session of the Commission on Human Rights of the United Nations Economic and Social Council (document E/CN.4/1996/62 of 20 February 1996) and the Government's response contained in a letter dated 29 March 1996 from the Permanent Representative of the Sudan to the UN Office at Geneva (document E/CN.4/1996/145). The Committee further has taken note of a communication dated 1 August 1996 by which the World Confederation of Labour submitted comments on the application of the Convention, including a number of documents published by Human Rights Watch and Christian Solidarity International and articles published in *The Wall Street Journal Europe* and *The Times*. A copy of this communication was dispatched to the Government on 27 August 1996. The Committee notes that no comments have been received from the Government on the matters raised by the World Confederation of Labour.

Previous observation and the Government's reply

2. In its 1994 observation, the Committee took note of the report on the situation of human rights in the Sudan by the Special Rapporteur who visited the country in September and December 1993. (Commission on Human Rights, Fiftieth Session, 1994; document E/CN.4/1994/48 of 1 February 1994.) In the report the Special Rapporteur, referring to slavery, servitude, slave trade, forced labour, and similar institutions and practices, declared that reports and eye-witness accounts revealed a great deal of consistency with regard to the circumstances of abduction, the locations of destinations, the names of locations, where children and women are said to be kept in special camps, and where people from the northern Sudan, or even from abroad, reportedly come to buy some of these people. Sale or traffic of children seemed to be an organized and politically motivated activity, of mass character, on the level of non-regular armed forces, like the Popular Defence Forces and contingents of *mujahidin* in the conflict zones in southern Kordofan and Bahr El-Ghazal. The Special Rapporteur had received persistent reports and testimonies of abductions of children such as the abduction in summer 1993 of some 217 children, mainly Dinka. Referring to the fear of the population that these children had been sold as slaves in Darfur and northern Kordofan, he stated that the Government had taken no measure to investigate this case either at federal or at local level.

3. The Committee further noted the indications in the report that in September 1992 the authorities in the State of Khartoum launched a campaign of "cleaning" the city of vagrant children, collected in a systematic way and taken to camps. While the authorities claimed that children received vocational training, the Special Rapporteur concluded that the practice of collecting up street children was in fact mostly a case of arbitrary arrest and detention without due process of law. The treatment in the camps was very harsh. Non-governmental sources told the Special Rapporteur that a large number of the children, in majority southerners, mainly from Dinka, Shilluk and Nuer tribes, or from families displaced from the Nuba Mountains, were receiving military training and sent to the front.

4. Having noted that under section 163 of the 1991 Criminal Act, "whoever commits forced labour on any person by unlawfully compelling him to work against his will shall be punished with imprisonment for a term not exceeding one year or with a fine or with both", the Committee recalled that Article 25 of the Convention makes it an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law for the illegal exaction of forced labour are really adequate and are strictly enforced. Consequently, the Committee requested the Government to provide full information on measures taken or envisaged to ensure the practical application of Article 25 of the Convention, and on measures taken to protect the Dinka and Nuba populations against practices contrary to the Convention.

5. In its reply to the Committee's previous observation, the Government stated that the Special Rapporteur had based his report on unfounded information, which made his report unreasonable, incredible and dishonest. This was illustrated by one example where he depended on previous allegations of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. He also explicitly endorsed the statements of persons with political motives — probably persons who did not even exist. He did not refer in his report to specific persons or authorities as sources of his information, and often attributed the commission of all acts to unknown persons, thus adopting the same method and attitude as those adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in formulating accusations and false allegations against Sudan; these were all oral statements not based on any evidence.

6. The Government had previously replied in detail to the allegations of forced labour and slave trading referred to in documents E/CN.4/Sub/A(21)1987/71Add.1 and E/CN.4/Sub.2/1988/32. Both documents referred to the existence of slavery, slave trade, abduction of women in the southern part of Sudan among Dinka, Shilluk and Nuer peoples and the tribes of the Nuba Mountains. The Government referred the Committee to the report which contains its reply to the Special Rapporteur's allegations. Indeed, it was regrettable that the Rapporteur's report was based, as he himself stated, on reports and stories narrated by eye-witnesses, that is, on oral statements not acceptable from the Government's point of view; he had not reported a single event which he was able to say he witnessed or investigated himself.

7. As to the Rapporteur's visit to the street children's camps, and his allegations that such camps were but an excuse for arbitrary detentions and imprisonments, the Government's answer was that the problem of street children was faced by many other countries as well. The Government was applying a strategy which began with a search for the children's parents and ended with the return of these children to them. However, there were some children who preferred to live in the streets, lapsed into delinquency and refused to return to their homes. The Government had to take care of this category. The right to shelter was a human right, and street children were eminently eligible to enjoy it. The camps were not a place of arbitrary detention for those children, but a place to protect them and take care of them with the aim to educate and train them to be good members of society.

8. As to the Committee's request to take measures to protect the Dinka and Nuba populations against practices contrary to the Convention, the Government stressed that all Sudanese enjoy equal rights and protection without any discrimination.

1996 report of the Special Rapporteur and the Government's reply

9. The Committee has taken due note of these indications. It also notes that in his report on the situation of human rights in the Sudan, submitted 20 February 1996, the Special Rapporteur expressed his regret at the lack of interest shown by the competent

Sudanese authorities with regard to the investigation of the cases brought to their attention over the past years, and also his concern that since February 1994 there had been an alarming increase in the number of reports and information emanating from a wide variety of sources on cases of slavery, servitude, the slave trade and forced labour. Although the Bahr El-Ghazal and Nuba Mountains area were the most affected by these phenomena, reports were received from all over southern Sudan of the abduction of men, women and children by the Sudanese army, the Popular Defence Forces (PDF), government armed local militia and groups of *mujahidin* fighting the war in southern Sudan on the Government's side. The abduction of southern civilians, men, women and children, whether Muslims, Christians or of traditional African beliefs, regardless of their social status or ethnic belonging, had become a way of conducting the war. During his fact-finding mission, the Special Rapporteur received detailed testimonies on regular abductions that had taken place in Gogrial and the surrounding locations during joint incursions by the army, PDF and armed militia, involving, at various dates between April 1994 and July 1995, the capture, detention and deportation to northern Sudan of civilians ranging in numbers from individual men to groups of several hundreds of women and children. Similarly, following an attack on 21 February 1995 by the government army on the village of Toror, Umgurban county, in the Nuba Mountains, it was reported that at least 250 civilians were abducted by soldiers. Relatives believe that those abducted were taken to one of the "peace villages" in Kordofan: Um Dorein, Agab or Um Sirdiba.

10. According to the Special Rapporteur, all the reports and information received indicated the direct and general involvement of the government army, PDF, government armed militia and *mujahidin* groups, backed by the Government of the Sudan and fighting beside the army and the paramilitary units, in the abduction and deportation of civilians from the conflict zones to northern Sudan. The places where those captured are temporarily detained before reaching their final destinations were also operated by army, PDF and/or *mujahidin* units. In the light of this information, the Special Rapporteur concluded that the total passivity of the Government after having received information for years regarding this situation could only be interpreted as tacit political approval and support of the institution of slavery and the slave trade. Repeated reports had indicated the involvement of local wealthy civilians, often well known for their close relations with the Government. All these practices had a pronounced racial aspect, as the victims were exclusively southerners and persons belonging to the indigenous tribes of the Nuba Mountains. Among the latter group, even Muslims were enslaved.

11. As regards more particularly the abduction of children, the Special Rapporteur indicated that some of the boys abducted from southern Sudan, as well as those rounded up from the streets of northern towns, were used as servants, while the girls became concubines or wives, mainly of soldiers and PDF members in northern Sudan. Another category of children, especially Dinka boys as young as 11 or 12, reportedly received military training and were sent by the Government of the Sudan to fight the war in southern Sudan. A further aspect that made the differentiation necessary was that children in the first category were, in a few cases, retrieved by their relatives and after long negotiations and after compensation had been paid to the captors were reunited with their families.

12. In its response of 29 March 1996 to the report of the Special Rapporteur the Government, recalling its earlier reservations against the Special Rapporteur, stated that it was not appropriate for the Special Rapporteur to raise the allegations contained in his recent report, including the finding that there was a tacit political approval to the practice of slavery, which he had previously failed to substantiate even after having visited the

Sudan three times. The Government further stated that the Special Rapporteur had failed to establish, through the allegations and the hearsay evidence he had compiled in his report, that the right of ownership contemplated by the different international instruments on the subject had ever been exercised with the knowledge of the authorities in the Sudan over any individual in any part of the country. Moreover, Article 7 of the Supplementary Convention on the Abolition of Slavery defined slave trade "as acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery ...", i.e. that the element of intention was decisive. In the Sudanese tribal fights, which normally resulted in captives and prisoners of war on both sides of the conflict, there was no such intention, since the fights would only break out to get more pasture and water for the cattle and not to collect slaves.

13. In this regard, the Committee notes that in his report of 20 February 1996 the Special Rapporteur already commented on the alleged misrepresentation of tribal disputes involving the capture of some members of the other tribe pending settlement of the dispute. According to the Special Rapporteur, in most of the cases brought to the attention of the Government of the Sudan, the reported perpetrators belong to the Sudanese army and the Popular Defence Forces (PDF), which are under the control of the Government of the Sudan. Even in the cases involving members of different tribal militia, the slavery occurred within the context of the war and indicated a deliberate policy on the part of the Government to ignore or even condone this practice of slavery as a way of fighting the civil war by other means. Moreover, the argument that these practices occur on a tribal basis did not exonerate the Government from its responsibility of assuring the right to life, security and freedom of its citizens.

14. With regard to the involvement of the paramilitary forces, including the Popular Defence Forces, in the slavery practices described by the Special Rapporteur, the Government stated in its response of 29 March 1996 that the Special Rapporteur was ill-advised and that the reports given to him in relation to these forces were intended to mislead him. In fact, these forces were carrying on a noble mission of protecting the relief routes and fighting banditry and outlaws who regularly interfered with the relief operations.

15. Similarly, with regard to the abduction of children, the Government stated that the issue was not true and was either created by the Special Rapporteur or by the sources who provided him with the information. But if he had provided specific names of persons engaged in such illegal practices the Government would not have hesitated in taking immediate legal action against the persons involved, especially that the crime of abduction was punishable under the Sudanese Penal Code.

WCL comments and the Government's report

16. The Committee takes due note of these indications. It also has taken note of the comments made by the World Confederation of Labour in its communication dated 1 August 1996 and of the documents included. The WCL states that according to the information in their possession, slavery and forced labour persist in the Sudan, contrary to Convention No. 29 ratified in 1957; that militia groups, often with the approval of the authorities, continue attacking villages, stealing cattle, burning houses and abducting civilians — men, women and children — forcing them subsequently to work as slaves employed in the household, in agriculture or keeping livestock, that living and working conditions are terrible and that moreover, the victims are often maltreated, and the women raped. The WCL draws attention, in particular, to the testimony given in the 1995 report by Human Rights Watch on Children of Sudan — slaves, street children and

child soldiers, which contradicts the Government's statements mentioned in the Committee's 1994 observation.

17. The Committee notes from the report by Human Rights Watch that it is based on research conducted in May and June 1995 in Khartoum, at the invitation of the Sudanese Government, and in March 1995 in Kenya and southern Sudan; that interviews in Khartoum were conducted in private with non-governmental people and agencies who requested anonymity for fear of government reprisals, while interviews in Juba, the largest town in the south, were controlled by Sudan security which terminated the visit before testimony regarding most abuses could be gathered in that town.

18. In its report, Human Rights Watch indicates that Arab militia, which have under the current Government been loosely incorporated into the Popular Defence Forces (PDF), were armed for the purpose of defeating the rebel SPLA by attacking its alleged social base in southern Kordofan and northern Bahr El-Ghazal, within raiding distance of the Arab raiders. The targets were principally the Nuba and Dinka peoples which to some extent were traditional rivals of the Arab tribes. In addition to being effectively licensed by state and federal governments to attack these civilians with impunity, the Arab militia were permitted to loot cattle, burn property, and take civilians captive. Army soldiers and officers as well as militia have captured and kept civilians as personal household slaves. These civilians, mostly women and children, were not captured for the purpose of criminal prosecution by the authorities. Nor were they captured as hostages in tribal negotiations. They were taken as war booty. They ended up far from their villages of origin, performing unpaid household labour and herding animals; some were sexually abused by their masters. The researchers had only the stories of those who managed to escape or were freed, who represented the tip of the iceberg. Many captured women and children were not bought or sold but simply kept by the soldiers or militia members who captured them. Although the current practices in Sudan did not include all characteristics of slavery, they did include several: slaves were outsiders, alien by origin (southern and Nuba African peoples), coercion could be used on them at will, and their labour power was at the complete disposal of a master. A group case described had a fortunate ending for the more than 500 captured women and children: a southern police officer was able to detach them from their military captors when they passed through his jurisdiction. Other cases illustrated, however, that those saved by official intervention continue to be in the minority. The report gives accounts of several group cases, as well as summaries of the testimonies of some of the individual victims of other raids, and of the people who helped them. The researchers found cases of children who were located after years by their families, or who succeeded in escaping. The families had to undertake the search themselves, with governmental assistance only where they chanced upon southerners among the police officers they met in their search. It was clear that existing legal remedies were not adequate to promptly free all of the stolen children. While in some cases described, legal procedures (administrative or judicial) eventually led to reunification of the child with his or her family, the legal route was costly and often fruitless.

19. In its report, Human Rights Watch also indicates that under-age boys have been drafted as soldiers and required to fight in the army or in government-sponsored militia, in violation of Sudanese law which sets 18 as the minimum age. In one case, a 10 year-old Dinka boy had been drafted into a Mundari tribal militia by government forces in 1991 and kept in service until he escaped in 1995. The rebel Sudan People's Liberation Army (SPLA) and the South Sudan Independence Army (SSIA) also continued to recruit under-age soldiers while at the same time the SSIA cooperated with the UNICEF family reunification programme.

20. The Committee has further taken note of various reports and documents by "Christian Solidarity International", also referred to by the WCL. *Evidence on Slavery, with Special Reference to Young Mothers and Children in Sudan*, submitted in April 1996 by the Baroness Cox and John Eibner to the UN Commission on Human Rights, is stated to be based on first-hand experiences obtained during eight visits to Sudan between 1993 and 1996. Since the 1995 meeting of the Commission on Human Rights, the CSI delegates have undertaken three fact-finding missions to northern Bahr El-Ghazal to investigate reports by the Special Rapporteur drawing attention to the continuing practice in Sudan of chattel slavery involving children and related practices, such as the forcible placement of boys into military service, with 9,034 being kept in 20 detention centres in southern Kordofan alone at the end of 1995.

21. The CSI delegates have stayed in several locations in Bahr El-Ghazal, including Tirole, Marial, Mayen Abun and Nyamiell, and have visited other places such as Manyiel. They have:

- taken evidence from men, women and children who have been captured and taken into slavery;
- talked to families whose children are currently enslaved in northern Sudan and heard graphic accounts of barbarities perpetrated during the raids by Arab PDF (Popular Defence Forces) against black African towns and villages;
- met Arab traders who described the way in which African slaves are brought back from the north and sold to their families or, if they have no surviving family members, to the local community administrators;
- taken evidence from local community leaders and made resources available to them for the redemption of a number of enslaved children.

22. On the basis of eye-witness evidence and first-hand accounts, the CSI delegates testify to gross violations of human rights, encouraged or directly inflicted by the Government of Sudan, that include the enslavement of women, children and men from the south and the abduction of boys and young men from the Nuba Mountains and from the Beja people and their enforced conscription into the government army to fight against the people of the south. In their conclusions, which fully support the findings of the Special Rapporteur, the CSI delegates indicate that the institution of slavery is experiencing a revival on a large scale in government-controlled areas of Sudan. The number of chattel slaves held in northern Sudan is estimated to be in the tens of thousands. Government-backed militia regularly raid black African communities for slaves and other forms of booty. The slaves, in most cases children and young women, are taken north where they are forced to provide domestic and agricultural labour and to provide sexual services against their will — for nothing other than a minimum of food for survival. Some boys are forced to attend military training camps, where they are indoctrinated and trained to wage war against their own people. The raids undertaken by the government-backed militia are accompanied by atrocities. Captives who are deemed unfit to serve as slaves are generally tortured and/or killed. Men are systematically massacred. But Arabs of some of the Rizeigat clans who are opposed to the Government have ceased their raids and have signed and honoured local agreements with some of the Dinka chiefs calling for the return of slaves to their families in the south. Slave raids, together with conventional warfare and the denial of humanitarian aid, are among the means used by the Government to transform the ethnically diverse country into an Arab, Islamic State, against the wishes of the vast majority of its black

African population. The devastating effects of this policy are tantamount to genocide. In support of these conclusions, an abundance of cases is referred to in detail.

23. Again, in their draft preliminary report on a June 1996 visit to destinations in northern Bahr El-Ghazal, their thirteenth to Sudan and neighbouring countries during the past three years, the CSI delegates confirm the conclusions drawn on the basis of previous visits. On the basis of detailed testimony by freed slaves, they add that several hundreds of slaves have been bought back, exchanging them for prices agreed with the local Dinka authorities. The African communities had to engage in these transactions as they were dependent on the Arab traders to bring back their people who had been captured and enslaved. The Arabs claimed they needed this money to reimburse them for the risks they take and for the costs of bringing back those who had been slaves. Thus the Government had created a slave trade through its incitement of the Arabs in the north to engage in a conflict for which they are not paid directly, but in which they are encouraged to keep whatever booty they can — including human beings. Also in June 1996 the CSI appealed to the High Commissioner for Human Rights on behalf of 8 year old Abuk Kwany, a slave of Ahmed Ahmed in Naykata, Sudan. Abuk was captured in March 1994 during a raid on her Dinka village, conducted by troops of the Government of Sudan. In April 1996 Abuk's father went to Naykata with a Sudanese police officer to free his daughter, who is now called by the Muslim name "Howeh", but the slave owner demanded 50,000 Sudanese pounds for her freedom. The policeman failed to force Ahmed to surrender the girl, and her father had to leave her in bondage.

24. In its comments, the WCL concludes from the various documents submitted by the CSI that forced labour and slavery continue in the Sudan, that according to the civilian authorities, there are about 12,000 children enslaved in the north of the country and their number is rising through the continuing raids. The WCL stresses that the responsible officers and soldiers know that they may pursue these odious acts with total impunity, even though they are contrary to national law, and that the Government fails to fulfil its obligation to protect its citizens and to prevent and punish such abuses.

25. The Committee notes that no comments have been received from the Government on the matters raised by the World Confederation of Labour. It also notes that in its report on the application of the Convention, received 18 October 1996, the Government states that Sudan strongly condemns all such practices wherever they exist because they are degrading to human beings and their dignity, and it undertakes to make all possible efforts to stop such practices whenever it is established that they exist. The Government adds that Sudan has totally fulfilled its obligation towards the 1995 decision of the United Nations General Assembly, which calls upon the Government to investigate accusations of slavery and practices similar to slavery, by establishing an investigation committee. This committee is now working in the Nuba Mountains and neighbouring areas to conduct an investigation into such accusations. The Government concludes by stating its commitment to applying the Convention, as the ratification of any Convention makes it a law which must be enforced.

The Committee's conclusions

26. The Committee takes due note of these indications. It notes that long-standing accusations of widespread illegal imposition of forced labour, tolerated or encouraged by the Government, have been made for years by the Special Rapporteur and flatly rejected by the Government. The same allegations have now been made in comments by the WCL, based on a variety of detailed reports stated to be based on first-hand evidence. In the circumstances, the Committee, while noting the Government's indication that an investigation committee has been set up and is working in the Nuba Mountains,

is deeply concerned that the Government has not lived up to its renewed undertaking to take all possible efforts to stop forced labour practices whenever it is established that they exist. Recalling that under Article 1 of the Convention, the Government has undertaken to suppress the use of forced labour in all its forms within the shortest possible period, and under Article 25, it shall be an obligation on the Government to ensure that the penalties imposed by law for the illegal exaction of forced labour are really adequate and are strictly enforced, the Committee urges the Government to take effective action to secure the observance of the Convention and to report on the concrete measures adopted, including information on any cases brought to justice, the number of convictions made and the penalties imposed on the offenders.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

United Republic of Tanzania (ratification: 1962)

The Committee notes that no report has been received from the Government.

For a number of years the Committee has been commenting on serious discrepancies between national law and practice and the provisions of the Convention.

The Committee referred in this connection to the following provisions:

- under article 25, paragraph 1, of the 1985 Constitution every person is obliged to voluntarily and honestly participate in lawful and productive work, to observe labour discipline and strive to achieve the individual and communal production targets required or prescribed by law; article 25, paragraph 2, provides that notwithstanding paragraph 1, there shall be no forced labour. However, article 25, paragraph 3(d), provides that no work shall be considered as forced labour if it is relief work that is part of (ii) compulsory nation-building initiatives, in accordance with the law, (iii) national efforts in harnessing the contribution of everyone in the work of developing the society and national economy and ensuring success in development;
- the Local Government (District Authorities) Act, 1982, the Employment Ordinance, 1952, as amended, the Human Resources Deployment Act, 1983, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Finances Act, 1982, under which compulsory labour may be imposed inter alia by administrative authority, on the basis of a general obligation to work and for purposes of economic development;
- several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982 entitled "self-help and community development", "nation-building", "enforcement of human resources deployment". The Committee noted for example that under the Mwanga District Council Self-help and Community Development By-laws, 1989, Government Notice No. 246 of 20 July 1990, "the Council may direct that any kind of development activities be done by all residents in the affected area within the Council or persons with special knowledge"; while no limitation is imposed on the nature of the projects, the intended beneficiaries or the duration of the participation, full-time employees of Government, Council, the Charma Cha Mapinduzi Party, the parastatal organizations and private companies are inter alia exempted from participation. For other residents, participation is mandatory and enforceable through fines and "extortion of property".

The Committee expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, from the National Constitution through Acts of Parliament to District by-laws, in contradiction with Convention No. 29 and Article 1(b) of Convention No. 105, ratified by the United Republic of Tanzania, which prohibits the use of compulsory labour for development purposes.

In its preceding comments, the Committee noted the Government's indication that the Employment Ordinance No. 366 of 1952 was in the process of revision and that training of labour officers in international obligations had taken place.

The Committee noted the Government's indication in its report received in 1993 that article 25(3)(d)(ii) of the Constitution refers to compulsory national service provided for by the law, and not nation-building. The national service is a programme organized by the Government in which volunteers as well as form six leavers undergo inter alia military training and participate also in other activities, e.g. agricultural cultivation which has more or less made the army self-sufficient in food, building schools for both army personnel children and other children in the vicinity, by rendering emergency services, teaching, etc. Activities conducted within the national service are intended to benefit the national service and its participants. These activities are not forced upon people nor may they be termed as nation-building initiatives.

The Committee again requests the Government to provide a copy of the provisions on compulsory national service as well as any implementing provisions specifying the programme.

As concerns legislation mentioned by the Committee, the Government stated that the different acts were still under consideration. More specifically, referring to the Human Resources Deployment Act, 1983, the Government indicated that it has to be amended in accordance with the prevailing political situation in the country.

In relation to the Employment Ordinance, 1952, the Committee noted the Government's statement that a revised text was to be submitted to Parliament in October/November 1993 for final approval. As concerns the different by-laws adopted under the Local Government (District Authorities) Act, 1982, the Government considered that they are legally unenforceable with the adoption of a multi-party system as they incorporate the former sole political party CCM (Chama Cha Mapinduzi) as an exception from their scope. Amendment or repeal of the principal legislation would affect the application of subsidiary legislation. The Government reiterated its commitment to rectifying the situation and to report on any developments in the interministerial consultations that are continuing.

The Committee finally noted the Government's indication that the "Nyalali Commission" has listed 40 pieces of legislation as not conforming to the principles of human rights, including those identified by the Committee as not in conformity with the Convention, and that these provisions are under consideration. Given that the United Republic was due to become a federal State by 1995, revision affected much of the legislation and the pace of amendments would be slower than anticipated.

The Committee again requests the Government to report on any progress made and on measures taken or envisaged to repeal or amend the provisions contrary to the Convention, to which the Committee referred in detail in its 1993 observation. The Committee also hopes that the Government will provide a copy of the Employment Ordinance as and when amended.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Tunisia (ratification: 1962)

With reference to the comments it has been making for many years, the Committee notes with satisfaction Act No. 95-9 of 23 January 1995 repealing Legislative Decree No. 62-17 of 15 August 1962, under which certain persons could be assigned by administrative decision to a state worksite. Act No. 95-9 also repeals the provisions of Act No. 78-22 of 8 March 1975 respecting civilian service, under which any Tunisian of 18 to 30 years of age unable to show that he was in employment or registered in a school or vocational training establishment could be assigned, for one year or more, to economic and social, or rural or urban development projects and was liable to re-educational labour in case he refused or deserted.

Venezuela (ratification: 1944)

Article 2, paragraph 2(c), of the Convention. In its previous comments, the Committee referred to sections 17, 21 and 23 of the Act of 1956 relating to vagrants and rogues, which empowers the administrative authorities to order internment in a rehabilitation and labour establishment, an agricultural reformatory colony or a work camp, in order to reform vagrants and rogues or to put them out of harm's way. The Committee pointed out that, in accordance with the Convention, work can be exacted from a person only as a consequence of a conviction in a court of law. It requested information on the number of persons who, during a three-year period, had been the subject of such measures, the duration of the measures and the establishments in which those concerned had been detained.

The Committee also requested the Government to take the necessary measures to introduce a more restrictive definition of vagrancy into sections 1 and 2(a) of the above-mentioned Act, since laws which define vagrancy and similar offences in an unduly extensive manner are liable to become, directly or indirectly, a means of compulsion to work, in violation of the Convention.

The Committee noted in its 1994 observation the information supplied by the Government to the effect that, under the above-mentioned provisions, security measures were applied to 476 persons in 1990, 560 persons in 1991 and 911 persons in 1992 and that they were for a duration of between 30 and 36 months.

Despite the fact that the above figures show a tendency for the application of such measures to increase, the Committee noted with interest from the information supplied by the Government that, although the Act relating to vagrants and rogues, which is intended to cover potentially dangerous situations in which no crime has been committed and which allows the jurisdiction of the courts to be transferred to the administrative authorities, has not yet been repealed, there are currently two petitions for the above Act to be declared unconstitutional, the texts of which were supplied by the Government. The Government adds that a draft Code of Sanctions has been submitted to Congress to determine competence for the imposition of sanctions, which would repeal the Act relating to vagrants and rogues.

The Committee notes that the Government states in its latest report that, to date, no decision has been given on the drafts mentioned and that it has requested information from the Supreme Court concerning the petition for the Act respecting vagrants and rogues to be declared unconstitutional; the information will be supplied as soon as it is available.

The Committee recalls that this matter has been the subject of comments for many years and hopes that, in its next report, the Government will be able to state that the provisions of sections 17, 21 and 23 of the Act of 1956 relating to vagrants and rogues has been repealed, thus ensuring compliance with the Convention in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Argentina, Bahamas, Bahrain, Belarus, Belize, Benin, Bulgaria, Burkina Faso, Burundi, Chile, Comoros, Côte d'Ivoire, Denmark, Dominica, Ecuador, Fiji, Guinea, Guinea-Bissau, Iraq, Liberia, Libyan Arab Jamahiriya, Pakistan, Papua New Guinea, Paraguay, Russian Federation, Senegal, Solomon Islands, Sri Lanka, Swaziland, United Republic of Tanzania, Trinidad and Tobago, Tunisia, Uganda, Ukraine.*

Information supplied by *Grenada, Guyana* and *Suriname* in answer to a direct request has been noted by the Committee.

Convention No. 30: Hours of Work (Commerce and Offices), 1930

A request regarding certain points is being addressed directly to *Spain*.

Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932

Algeria (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> 1. In its previous comments, the Committee noted that Act No. 88-07 of 26 January 1988 respecting occupational health, safety and medicine established the general framework for the prevention of occupational risks, but does not contain specific provisions applicable to dock work which give effect to the Convention. The Committee has noted the Government's statement in its report that a specific text covering ports and docks is provided for under Act No. 88-07, and that this text continues to be examined according to the guidance and the time-limits set by the Government. The Committee hopes that the necessary provisions to give effect to the Convention will be adopted and that the Government will be able to supply the adopted text in the near future, or at least information on the guidance given and the time-limits established in that respect.
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> 2. The Committee notes from the Government's report, that internal regulations and collective agreements applying to port enterprises establish the necessary hygiene and safety requirements for the health of workers and that a joint occupational health and safety commission is set up in each unit to establish the health and safety rules. The Committee requests the Government to supply samples of the various texts referred to which relate to occupational health and safety in the enterprises concerned in the various ports of the country.
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> The Committee notes the text of the Inter-Ministerial Order of 5 November 1989 respecting the procedure for supervising the processes of loading and unloading hazardous goods (Article 12), which was supplied by the Government with its report. It notes that under the terms of section 2 of the Order, the supervisory procedure "is established in documents 1 and 2 attached to the text of the present Order". The Committee requests the Government to supply copies of these documents.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Italy (ratification: 1933)

Adoption of measures to give effect to the Convention

For many years, the Committee has been noting that the protection of dock workers against occupational accidents is governed in the country's various ports by local regulations which do not always ensure observance of the Convention. In its previous comments, it noted the adoption of Act No. 84 of 28 January 1994 to reorganize the legislation on ports. Under the terms of section 24(3) of the above Act, the Government was to issue, within six months of the entry into force of the Act, regulations containing provisions on occupational safety and health in port work.

The Committee notes that, to give effect to section 24(3) of Act No. 84, a commission composed of representatives of the relevant organizations and authorities has been set up to examine the situation in ports and to draft standards which take account of the specificities of dock work, but that the work of the commission has been suspended. The Committee notes that, under the terms of section 1 of Legislative Decree No. 212 of 19 March 1996 amending Legislative Decree No. 626/94 of 19 September 1994 to implement directives 89/391/CEE, 89/654/CEE, 89/655/CEE, 89/656/CEE, 90/270/CEE, 90/394/CEE and 90/679/CEE concerning the improvement of occupational safety and health in all workplaces, the shipping sector is excluded from the scope of Legislative Decree No. 626/94. The rules laid down in this Decree can be applied only by means of a Decree issued by the competent minister, which takes account of the specific demands of the sector, in this case the Minister of Transport and Shipping, and the Ministers of Labour, Social Security, Health and the Public Service. The Committee notes that pursuant to the above provision, the Minister of Transport and Shipping is shortly to submit a draft text on the subject.

The Committee reminds the Government that for more than 30 years it has been drawing its attention to the need to adopt a text which ensures the prevention of accidents in all ports. It again expresses the hope that the Government will adopt a text to give effect to the Convention, in compliance with section 1 of Legislative Decree No. 242/96.

Ratification of Convention No. 152

The Committee notes that, in its latest reports on the application of Convention No. 32, the Government refers to Italy's ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and that the Government takes account of the obligations deriving from both these instruments. The Committee notes that, although Convention No. 152 was ratified by Act No. 862 of 19 November 1984, the ratification has never been formally communicated to the Director-General for registration.

The Committee hopes that the Government will be able to submit formal instruments of ratification for Convention No. 152. Meanwhile, it will continue to base its examination on the provisions of Convention No. 32, in accordance with Article 24, paragraph 3.

[The Government is asked to report in detail in 1998.]

Mauritius (ratification: 1969)

The Committee takes note of the information provided by the Government in its last report. The Committee notes with satisfaction that Regulation 11 of the Docks Regulations 1937, whose complete text dated 1991 has been supplied by the Government with its report, prescribes the use of safe means of access to a ship which is alongside any other ship, vessel or boat, for persons employed having to pass from one to the other *(Article 3 of the Convention).*

New Zealand (ratification: 1938)

The Committee notes with interest the information provided in the Government's report and, in particular, the statistics concerning inspections which had been carried out and the number of fatalities reported having occurred during cargo-working operations.

The Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU) which points out that not all foreign vessels were inspected on arrival on the New Zealand coast due to time of arrival and insufficient inspection staffing. The NZCTU states that a number of accidents causing serious harm have occurred during the period covered by the Government's report. The Committee takes note of the Government's reply to these comments, where the latter emphasized that all these vessels have been inspected in the past two years; a total of 100 per cent of these vessels were inspected at either their first or second port of arrival, 99.5 per cent were inspected at the first port. As regards the incidents causing serious harm, the Government points out that their number had shown an increase in the earlier part of the reporting cycle and a significant decrease in the latter part.

The Committee would be grateful if the Government would provide information regarding the number and causes of all kinds of accidents reported (not only the fatalities) and the number of workers covered by the relevant legislation *(point V of the report form).*

Pakistan (ratification: 1947)

With reference to the comments made by the Fishing Vessels Employees' Union in its communication of 1991 concerning the working conditions of coastal fishermen, the Committee notes from the Government's report that an updated Pakistan Merchant Shipping Draft Bill 1994, incorporating the corrections, amendments, reconsiderations and additions, made by the Law and Justice Division, would be submitted to the Cabinet for approval before its submission to the National Assembly.

The Committee hopes that the Draft Bill, as well as subsequent rules, will be adopted in the near future and that its provisions will give effect to the Convention. The Committee requests the Government to provide a copy of this text as soon as it has been adopted.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bangladesh, Canada, Mauritius, Panama, Uruguay.*

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Argentina (ratification: 1950)

The Committee notes from the Government's report that it has the intention to ratify the Minimum Age Convention, 1973 (No. 138). It recalls, however that the denunciation of Convention No. 33 depends upon the acceptance of the obligations of Convention No. 138 in respect of non-industrial employment as defined in Convention No. 33. Noting that Convention No. 33 remains fully in force in the meantime, the Committee requests the Government to continue to supply information on its application.

The Committee notes the information supplied by the Government to the United Nations Committee on the Rights of the Child, which examined its initial report at its 7th Session (October 1994). It notes in particular the indication in the Government's report to the United Nations Committee that the problem of child labour is a serious one, whose dimensions are certainly greater than is usually recognized, and that child labour is particularly important in informal and urban activities (CRC/C/8/Add.17, paragraph 58).

The Committee also notes the indication by the Government representative at the United Nations Committee that the incidence of child labour was in fact concentrated in Greater Buenos Aires, where children up to the age of 14 working illegally in the informal sector numbered 27,000, and that large numbers of children also worked in such major cities as Córdoba, Tucumán and Rosario (CRC/C/SR.179, paragraph 41). Noting further that programmes to combat the economic exploitation of children have been undertaken according to the same sources, the Committee requests the Government to supply detailed information on the application of the Convention in practice, as required by *point V of the report form*, including statistics and extracts from official reports, as well as on the measures taken or envisaged accordingly.

[The Government is asked to report in detail in 1997.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Austria, Burkina Faso, Central African Republic, Gabon.*

Convention No. 34: Fee-Charging Employment Agencies, 1933

A request regarding certain points is being addressed directly to *Slovakia.*

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

France (ratification: 1939)

Article 12, paragraph 3, of the Convention. The Committee recalls that with regard to the supplementary allowance of the National Solidarity Fund (FNS) provided for in section L.815-2 of the Social Security Code, the Government had referred previously to ministerial consultations on the question of extending the provision of this allowance to all foreigners resident in France. Consequently, the Committee expresses the hope that the Government will be able to indicate in its next report the measures taken to grant in law and practice the FNS supplemental benefit to nationals of all member States which are bound by the Convention (and not only to nationals of a country which has signed an international reciprocity agreement, as provided in section L.815-5 of the Social Security Code).

See also, Article 3, paragraph 1, branch (d) (invalidity benefits), of Convention No. 118.

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Information supplied by *France* in answer to a direct request has been noted by the Committee.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

France (ratification: 1939)

See under Convention No. 35.

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Information supplied by *France* in answer to a direct request has been noted by the Committee.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

France (ratification: 1939)

See under Convention No. 35.

* * *

Information supplied by *France* in answer to a direct request has been noted by the Committee.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

France (ratification: 1937)

See under Convention No. 35.

* * *

Information supplied by *France* in answer to a direct request has been noted by the Committee.

Convention No. 41: Night Work (Women) (Revised), 1934

Peru (ratification: 1945)

The Committee notes that, at its 266th Session (June 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the General Confederation of Workers of Peru (CGTP) under article 24 of the ILO Constitution, alleging non-observance by Peru of the Night Work (Women) Convention, 1919 (No. 4); the Night Work (Women) Convention (Revised), 1934 (No. 41); and the Underground Work (Women) Convention, 1935 (No. 45). The allegations referred to the adoption of Act No. 26513, approved by the Executive by Presidential Decree No. 5-95TR (published in *El Peruano* (Official Journal) on 18 August 1995), whose effect was, inter alia, to repeal the provisions regulating night work by women.

In accordance with the recommendations set out in the above-mentioned report, the Government is asked to take the necessary measures to ensure the respect of obligations undertaken in ratifying, inter alia, Convention No. 42 and, in the framework of reports due under article 2 of the Constitution, to provide information on such measures. The Government is reminded that, in 1990, the International Labour Conference adopted a Convention (No. 171) and a Recommendation (No. 178) on night work and a Protocol to the Night Work (Women) Convention (Revised), 1948 (No. 89) which meet, through different approaches, both the concerns about the employment of women and the protection against forms of work which have adverse effects on the health and the family and social life of workers.

[The Government is asked to report in detail in 1997.]

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

Haiti (ratification: 1955)

The Committee notes the information contained in the Government's report. It hopes that the next report will contain information on progress made in establishing an infrastructure for gathering information on the practical application of the Convention, in accordance with *point V of the report form* approved by the Governing Body.

New Zealand (ratification: 1938)

For a number of years the Committee has been drawing the Government's attention to the fact that the system of "full coverage" provided by the New Zealand legislation (currently the Accident Rehabilitation and Compensation Insurance (ARCI) Act of 1992) may cover a greater number of occupational diseases but is not in accordance with the Convention since, under this system, the diseases listed in the schedule to the Convention are not presumed to be occupational when they are contracted by workers engaged in the trades, industries, or processes listed in this schedule.

In previous replies the Government had stated that it was undertaking a comprehensive review of the ARCI scheme relating to occupational diseases. In its last report the Government states that the first stage of the review has been completed and consequently certain amendments have been made to the legislation. Not all of the issues were addressed, in particular the compliance with Convention No. 42; but work is still ongoing. However, the Government considers that the absence of a list of corresponding occupations or industries does not disadvantage workers since it provides much wider coverage by including all diseases of occupational origin and it accounts for new diseases of occupational origin without the need to amend the legislation. Furthermore, according to the Government, a worker with one of the diseases listed in the Convention would be covered if he or she contracted the disease in any employment, not just in those that are listed in the Schedule to the Convention.

The New Zealand Employers' Federation concurs with the Government's report, but adds that in its opinion, the schedule to the Convention creates no more than a presumption of occupational origin which is susceptible to evidence to the contrary. The absence of a presumption of occupational origin does not, in practice, present any problem whatsoever. Moreover, in its view, the schedule to the Convention protects workers only if they are currently engaged in the listed trades and industries, and does not account for diseases contracted from past employment. Consequently, the New Zealand Employers' Federation believes that the ARCI Act of 1992 should be considered as providing more protection for workers than that provided in the Convention.

The Committee also notes the comments supplied by the New Zealand Council of Trade Unions (NZCTU). For its part, the NZCTU stresses that no relevant changes have occurred in the system.

The Committee notes all of these views. It recalls that the double list system adopted by the Convention is intended to create a presumption of occupational origin in favour of workers engaged in the industries or trades listed in the right-hand column of the schedule when these workers are affected by one of the diseases mentioned in the left-hand column. Although in some respects the current system may be more favourable than that provided under the Convention, it appears that the essential presumption of occupational origin does not exist, and therefore, that the ARCI Act does not in fact comply with the requirements of the Convention to remove the burden from the worker to show a link between the disease from which he or she suffers and his or her work in a particular occupation or industry. Furthermore, the Committee recalls that the double list system provided under the Convention does indeed also account for persons who previously worked in one of the industries listed, but who are not engaged in the industry at the time the disease becomes manifest. Consequently, the Committee again points out that the Convention would not prevent the adoption of a double list complemented by a general definition of occupational diseases. It hopes that the Government will take the necessary measures in the near future to give full effect to the provisions of the Convention and it requests further information on any progress made in this respect.

[The Government is asked to report in detail in 1998.]

Convention No. 44: Unemployment Provision, 1934

Spain (ratification: 1971)

See under Convention No. 102.

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In addition, a request regarding certain points is being addressed directly to *Bulgaria*.

Convention No. 45: Underground Work (Women), 1935

Netherlands (ratification: 1937)

The Committee notes the information supplied by the Government in its report, as well as the observations made by the National Federation of Christian Trade Unions (CNV) sent by the Government that, since this is a fairly outdated Convention, it is no longer or scarcely of relevance for the situation in the Netherlands. The CNV considers that the question is whether such a Convention is still compatible with the General Equal Treatment Act which provides that there must be no discrimination with regard, inter alia, to access to the employment market for men and women except where such discrimination is objectively justified. It therefore considers that perhaps this can be discussed in due course. The Committee wishes to recall in this connection that Article 5, paragraph 1, of Convention No. 111 provides that "special measures of protection or assistance provided for in other Conventions or Recommendation adopted by the International Labour Conference shall not be deemed to be discrimination".

The Committee requests the Government to supply information on any measures taken in this respect.

Peru (ratification: 1945)

The Committee notes that, at its 266th Session (June 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the General Confederation of Workers of Peru (CGTP) under article 24 of the ILO Constitution, alleging non-observance by Peru of the Night Work (Women) Convention, 1919 (No. 4); the Night Work (Women) Convention (Revised), 1934 (No. 41); and the Underground Work (Women) Convention, 1935 (No. 45). The allegations referred to the adoption of Act No. 26513, approved by the Executive by Presidential Decree No. 5-95 TR (published in *El Peruano* (Official Journal) of 18 August 1995), whose effect was, inter alia, to repeal the provisions banning work by women in mines and underground and — in general — in any other places which might endanger their health.

In accordance with the recommendations set out in the above-mentioned report, the Government is asked to take the necessary measures to ensure the respect of obligations undertaken in ratifying, inter alia, Convention No. 45 and, in the framework of reports due under article 2 of the Constitution, to provide information on such measures. The Committee reminds the Government that the fact that no laws or regulations authorizing underground work by women in mines have been adopted does not amount to an adequate measure for ensuring the application of the Convention in law, even if the Convention forms a part of the Peruvian legal order. Appropriate measures must be taken to publicize the amendments to the national legislation in order to inform all those concerned of their scope and thus avoid any uncertainty as to the applicable law.

[The Government is asked to report in detail in 1997.]

Zimbabwe (ratification: 1980)

With reference to its previous observation, the Committee notes from the Government's report the information that when the Safety and Health in Mines Convention, 1995 (No. 176) is eventually ratified the Government will recommend the denunciation of Convention No. 45, which will remove any conflict with Convention No. 111. The Committee wishes to recall in this connection that *Article 5, paragraph 1, of Convention No. 111* provides that "special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination".

The Committee also notes the indications provided by the Government that thus far both the Ministry of Mines and the Chamber of Mines on which the Government relies for the statistics in this domain confirm that there is conformity with the requirements of the Convention it has ratified.

The Committee requests the Government to supply information on any measures taken in this respect.

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In addition, a request regarding certain points is being addressed directly to *Viet Nam*.

Convention No. 52: Holidays with Pay, 1936

Belarus (ratification: 1956)

In its previous comments the Committee noted that section 74 of the 1992 version of the Labour Code authorizes, in exceptional cases, when the granting of holiday may adversely affect the normal activity of the enterprise, institution, organization, the employer to defer the holiday to the following year, with the agreement of the worker. The Committee recalled that, in accordance with the Convention, every person to whom the Convention applies shall be entitled to an annual holiday of at least six working days *(Article 2, paragraph 1, and Article 4 of the Convention)* and that consequently only part of the holiday which exceeds this minimum duration may be postponed *(Article 2, paragraph 4)*. The Committee notes that the Government's report contains no reply to its comments. The Committee again expresses the hope that the Government will take the necessary measures to bring legislation into conformity with the Convention on this point.

Myanmar (ratification: 1954)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observations, the Committee noted the Government's indication that the Factories Act (1951), the Shops and Establishments Act (1951) and the Leave and Holidays Act (1951) had been reviewed and redrafted taking into consideration the Committee's comments and that the revised texts were undergoing final review by the Laws Security Central Body. The Government's latest report indicates that the draft labour laws are still under review. The Committee would be grateful if the Government would indicate any more recent developments in this respect. It also hopes that the revised texts will be adopted and transmitted to the Office in the very near future.
>
> Furthermore, the Committee trusts that the adopted texts will ensure the application of the Convention to all undertakings set forth in *Article 1 of the Convention*, particularly those small establishments, shops and offices not currently covered by the legislation, as well as building and public works and road transport undertakings. In this connection, the Committee reiterates to the Government the following points:
>
> *Article 2, paragraph 2.* Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service, whereas under section 4(1) of the Leave and Holidays Act workers between 15 and 16 years are only allowed ten days.
>
> *Article 4.* Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days, or, in the case of persons under 16 years of age, 12 working days) must be void, whereas section 4(3) of the same Act allows agreements to accumulate earned leave.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ukraine (ratification: 1950)

In its previous comments the Committee noted the observations of May 1994 of the Republican Council of the Trade Union of Workers of the Coalmining Industry of Ukraine, regarding the withholding of holiday remuneration from coalminers. The Committee noted the Government's comments concerning those observations to the effect that, due to the economic crisis faced by the coalmining industry in 1994, there had been delays in paying coalminers their remuneration for their annual holidays, but that the Government would endeavour in the future to fully implement the provisions of the Convention.

The Committee further notes the observations of 9 October 1996 by the Health Workers' Union of Ukraine and of 15 November 1996 by the Central Committee of the Ukrainian Trade Union of Education and Science Employees alleging that the provisions of the Convention are not applied and that remuneration for holidays is not paid in time. The organizations refer to Decree No. 333/1996 of 12 May 1996, "On urgent provision of funds to ensure the prompt payment of wages, pensions, grants and other social benefits", stating that it is not being implemented. The Committee further notes that in a communication of 12 December 1995 the Central Committee of the Trade Union of the National Ukrainian Academy of Sciences has also alleged the non-observance of the Convention. The Committee requests the Government to provide its comments on the allegations by these trade unions.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Chad, Libyan Arab Jamahiriya, Ukraine.*

Convention No. 53: Officers' Competency Certificates, 1936

Argentina (ratification: 1955)

The Committee notes the information supplied by the Government in its report. It also notes the observations submitted by the Union of United Maritime Workers (SOMU) of 20 August 1996. In earlier comments, the Committee referred to the new regulations on training and qualification for seafarers in the merchant navy (REFOCAPEMM, sections 1.06 to 1.10) and to section 2 of Act 17.371 and considered that in the light of the information supplied by the Government, and the provisions of the national legislation, *Articles 3 and 4 of the Convention* are applied, at least in law. It noted, however, that according to the allegations of the SOMU and the indications supplied by the Worker member of Argentina at the 82nd Session of the Conference, the provisions regarding recognition of competency certificates for foreign seafarers were not complied with as such certificates were given recognition too easily or issued by private bodies. The Committee requested the Government to supply further information so that it can better understand the situation. It also requested it to supply further information on the results of meetings which were to be held in the Tripartite Consultative Committee.

The Committee notes the information supplied by the Government in its report to the effect that the Argentine naval prefecture has sole authority to issue embarkation certificates ("cédulas de embarco"). Granting of such a certificate by another authority or a private enterprise would constitute a violation of national legislation. The Committee requests the Government to supply information on how application in practice of the legislation regarding recognition of competency certificates and embarkation certificates is ensured. With respect to the consultations held in the Tripartite Consultative Committee, the Committee refers to its comments on the application of Convention No. 22.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Liberia, Libyan Arab Jamahiriya.*

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936

Djibouti (ratification: 1978)

The Committee notes with regret that for the third time, the Government's report has not been received. The Committee must return to the question in a new direct request. It hopes that the Government will take the necessary steps and supply the information requested.

* * *

In addition, a request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Liberia (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous comments, the Committee notes with interest that section 326(1) of the Maritime Law has been amended to require 15 years as the minimum age for employment or work on Liberian vessels, registered in accordance with section 51 of the Maritime Law (Title 22 of the Liberian Code of Laws). It further notes that such minimum age is required irrespective of any other provision of Title 22, including section 290(2)(a) which would otherwise have limited the application of Chapter 10 and section 326 (on minimum age) to persons employed on vessels of not less than 75 net tons. It notes however that section 326(3) permits persons under the age of 15, to occasionally take part in the activities on board such vessels under specified conditions. The Committee would be grateful if the Government would indicate how such special employment is limited to children of not less than 14 years of age, taking into account all the conditions specified by *Article 2, paragraph 2, of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Pakistan (ratification: 1955)

Further to its previous observation, the Committee notes the Government's report received during its session.

Fixing of minimum age

The Committee has already noted in its earlier comments, the adoption of the Employment of Children Act, 1991, which in section 2(iii) defines "child" as a person who has not completed his fourteenth year of age. Section 19 of the said Act prescribes that the definition of "child" contained in the Factories Act, 1934, and the Mines Act, 1923, should be deemed to be amended in accordance with the definition in section 2 mentioned above. The Factories Act, 1934, and the Mines Act, 1923, established the minimum age for access to employment at 15 years of age, in accordance with *Article 7, paragraph 4(a) and (b), of the Convention*. The Pakistan National Federation of Trade

Unions observed in 1992 that this had resulted in a contradiction regarding the minimum age for access to employment established in the legislation.

In its latest report, the Government states that the Tripartite Task Force on Labour has been debating on the point, and that the new labour policy based on the recommendations of the Task Force is yet to be announced. The Government insists, however, that the definition of "child" in the Factories Act, 1934, and the Mines Act, 1923, has been amended by virtue of section 19, read together with section 2 of the Employment of Children Act, 1991. The Government further refers to the Schedule (Part I and Part II) to the 1991 Act as dangerous or unhealthy work prohibited for children.

The Committee notes the above information. It draws the urgent attention of the Government to the fact that, according to the definition cited above, the Employment of Children Act, 1991, prohibits the employment or work in dangerous or unhealthy occupations only for children under the age of *14 years*. This does not meet the requirement under *Article 7, paragraph 4, of the Convention* which imposes such prohibition for persons under the age of *15 years*. In addition, it signifies a serious retrogression from the minimum age of 15 years prescribed earlier under the Factories Act, 1934, and the Mines Act, 1923. The Committee further notes that the Schedule (Part I and Part II) to the 1991 Act does not include employment or work in mines, quarries and other works for the extraction of minerals from the earth, which should also be prohibited for children under the age of 15 years in accordance with *Article 7, paragraph 4(a), of the Convention*.

The Committee therefore requests the Government to indicate the measures taken or envisaged to ensure that children under the age of *15 years* should not be employed or work in mines, quarries and other works for the extraction of minerals from the earth, or in other dangerous or unhealthy occupations, in accordance with *Article 7, paragraph 4, of the Convention*. The Committee also asks the Government to supply information on the development in the work of the above-mentioned Task Force, and measures taken consequently upon it.

Practical application

The Committee notes that the Government's reports refer to the efforts to ensure the application of the Convention in practice. It notes however that, according to the report received in March 1996, primary education had been made compulsory in the Province of Punjab so as to minimize the abuse of child labour, while the previous report referred to the compulsory primary education as if it were for the whole country. The Committee asks the Government to clarify this point.

The Committee further notes the latest information on the number of inspections and prosecutions made as well as of convictions obtained in decided cases under the Employment of Children Act, 1991, and also information on the raids conducted under the Bonded Labour System (Abolition) Act. The Committee requests the Government to continue to supply further information regarding the application of the Convention in practice.

The Committee noted in the previous comment that the Government had signed a Memorandum of Understanding with the ILO, envisaging activities under the International Programme on the Elimination of Child Labour. It notes from the latest report that a technical advisory committee had been set up, that a nationwide survey on child labour has been completed, that more strict legislative implementation measures have thereafter been taken, and that amendments to the respective laws will be carried out if necessary. The Committee requests the Government to continue to provide more detailed information on further development in this regard, with particular reference to any consideration given in such general framework to the point raised above concerning the fixing of minimum age.

The Committee notes that the issue of bonded labour of children is dealt with in the observation on the application of Convention No. 29 made by the New Zealand Council of Trade Unions (NZCTU) in a communication dated 18 June 1996, which included a 1996 report by Anti-Slavery International on debt bondage in Pakistan, "This menace of bonded labour", as well as in the Government's report on the application of Convention No. 29 also received during its session. It recalls that Convention No.59 covers employment or work by children under the ages stipulated (in *Article 7*, in the case of Pakistan) in industrial undertakings as defined under *Article 1*. With reference to its comments on Convention No. 29, the Committee requests the Government to examine the situation also in the light of this Convention, and to supply information on the measures taken in this regard.

Turkey (ratification: 1993)

The Committee has noted the Government's first report as well as the comments made by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IS) received with it.

The Committee notes with interest the indications by TISK that, because of the importance they attach to the problem, TISK initiated in November 1993 a project called "Training of Managers Concerning Child Labour" in conjunction with IPEC (the International Programme on the Elimination of Child Labour). The Committee hopes that the Government's future reports will include information on such projects and their effect on the application of the Convention.

The Committee notes that TÜRK-IS refers to the increase in the employment of children below the minimum age stipulated under the Convention, and points out the insufficiency of labour inspection. The Committee requests the Government to supply information on the application of the Convention in practice, including the information on inspection, and with reference to the points raised, among other things, in the direct request which is also being addressed to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Turkey*.

Convention No. 60: Minimum Age (Non-Industrial Employment) (Revised), 1937

Paraguay (ratification: 1966)

The Committee notes the new Labour Code (Act No. 213, promulgated on 29 October 1993), as well as the Minor's Code (Act No. 903 of 18 December 1981).

The Committee notes that the minimum age of 15 years under section 119 of the new Labour Code applies only to the industrial undertakings, while the old provision of this section as amended by Act No. 506 of 1974 used to cover any public or private undertaking. There is no other provision in the new Labour Code or the Minor's Code fixing the minimum age for admission of children to non-industrial undertakings apart from the provision of section 6 of the Minor's Code which prohibits work of children under 12 years old outside their home. The Committee requests the Government to indicate how effect is given to *Article 2 of the Convention* which requires the general prohibition of employment of children under 15 years of age in non-industrial work.

A direct request concerning other points is also being addressed to the Government.

[The Government is asked to report in detail in 1997.]

* * *

In addition, a request regarding certain points is being addressed directly to *Paraguay*.

Convention No. 62: Safety Provisions (Building), 1937

Algeria (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> 1. The Committee notes the information supplied by the Government in its report for the period ending 20 June 1993. It notes with interest Executive Decree No. 93.120 of 15 May 1993 concerning the organization of occupational medicine, a copy of which was attached to the report.
>
> 2. In the comments that it has been making for a number of years, the Committee has noted the absence of special regulations concerning safety in the building industry, as required by the Convention. It notes with interest that, according to the Government's last report, specific regulations are in the process of being adopted which should cover the principles and standards set out in the Convention: these consist of a draft Decree issuing specific requirements for work in the building sector and another draft Decree respecting inter-enterprise safety and health committees in the building sector. The Government emphasizes that special attention is paid by the public authorities to all matters relating to the safety and health of workers in the building sector, which is considered to be one of the high risk sectors, and states that the enactment of the above regulations should take place in the near future. The Committee therefore hopes that the necessary provisions to give effect to the Convention will come into force in the near future and that the Government will supply a copy of them.
>
> 3. The Committee notes the statistics on the number and classification of occupational accidents for the years 1986-88 supplied by the Government with its report. The Committee hopes that, in accordance with *Article 6 of the Convention*, the Government will provide more recent statistics in future reports.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Central African Republic (ratification: 1964)

The Committee notes the information supplied by the Government.

Introduction into the national legislation of the standards set forth in ratified Conventions

In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws or regulations to give effect to the provisions contained in the Convention. It notes that the Government reiterates its statement that, under the Constitution of 4 January 1995, international agreements, treaties and conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not *self-executing*, that is where they require special measures for their application, which is the case, at least, for Part I of the Convention. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c) of the Convention*.

The Committee once again draws the Government's attention to *Article 1, paragraph 1*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes that it will maintain in force laws or regulations which ensure the application of the General Rules set forth in Parts II to IV of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the Government services responsible. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

Statistics of accidents (Article 6 of the Convention)

For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.

[The Government is asked to report in detail in 1998.]

Finland (ratification: 1947)

The Committee notes with interest the information concerning amendments to the relevant national legislation made in order to enable ratification of the Safety and Health in Construction Convention, 1988 (No. 167). It notes that the Government's Bill for ratification of Convention No. 167 had been submitted to Parliament on 18 December 1995 and is now before it.

The Committee also notes the statistical information supplied in the Government's report in accordance with *Article 6 of the Convention*.

The Committee notes the comments made by the Central Organization of Finnish Trade Unions (SAK) pointing out inadequacy of safety control and deficiencies in the cooperation for safety and health at the enterprise level. The Committee requests the Government to provide extracts from the reports of the inspection services, the number and nature of the contraventions reported and the resulting action taken (*point V of the report form*).

France (ratification: 1950)

The Committee notes that the Government's report has not been received.

The Committee notes the comments of the French Democratic Labour Confederation (CFDT), transmitted by the Government in August 1996, which state that the building and public works sector is the most dangerous, and that the number of work accidents in this sector is being reduced more slowly than in other sectors. The CFDT also states that, in enterprises where it is represented, it is not aware of any visits by labour inspectors requesting enterprises to comply with the provisions of the Convention. The Committee draws attention to the article in the press of the National Federation of Salaried Workers in Construction and Wood (FNCB/CFDT), annexed to the comments of the CFDT, stating that the statistics of the National Sickness Insurance Fund (CNAM) for 1992 recorded 162,000 accidents in the building sector which required a stoppage of work, more than 16,000 accidents which resulted in a disability recognized by the Social Security Office, and 299 deaths caused by work accidents. It also draws attention to the fact that, while there are no statistics concerning temporary workers (about 80,000 workers in this sector), studies confirm that the risk of accidents for these persons is twice as high as for other categories of salaried workers in this industry.

Among the causes of this situation (which costs 7 billion francs in benefits paid by the Social Security Office), the FNCB/CFDT estimates that the amount of contributions, notably for small enterprises which represent 66 per cent of workers in the sector, does not provide a sufficient incentive. Now, according to the FNCB/CFDT, the studies of the CNAM have concluded that, when the level of contribution creates incentives, the enterprise considers the cost of failing to take safety measures. Therefore, the regulations are only partially applied and should be reviewed taking into account risks and prevention, which are now not significant obligations.

In the absence of a reply from the Government to these comments, the Committee requests it to indicate the measures taken to ensure that the pertinent legislation shall be brought to the attention of all persons concerned, as from the first day of work, and in respect of all categories of workers, including temporary workers *(Article 3(a) of the Convention)*. Regarding the information provided by the FNCB/CFDT concerning the enlargement since 1992 of the labour inspectors' powers, the Committee asks the Government to supply detailed information on the manner in which inspections are ensured in all building sites *(Article 4)*. It also asks the Government to supply extracts of inspection reports and statistics concerning the building industry (the number of workers covered by the legislation; the number and nature of violations discovered; the number, nature, and cause of accidents recorded) in order to facilitate evaluation of the application of the Convention in practice *(point V of the report form)*.

Netherlands (ratification: 1950)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee has noted the information supplied in the Government's report for the period 1987-91 as well as the observations made by the Netherlands Trade Union Confederation (FNV) on the application of the Convention and the Government's reply to these observations, communicated by the Government in March 1992.
>
> I. *Lifting equipment*
>
> 1. The Committee notes that the Netherlands Trade Union Confederation (FNV) is reasonably satisfied with regard to the implementation of provisions concerning lifting equipment, but mentions, among its concerns, that lifting equipment should be tested for reliability before the start of each new building project. In its reply, referring, inter alia, to section 141(4) of the Factory and Workplace Safety Regulations 1938 (VBF), the Government indicates that a crane must be checked and tested before the commencement of a new construction project, but not by the KEBOMA foundation, which has been designated only for the *periodical* checks and tests on mobile and tower cranes; the employers themselves

bear the responsibility for carrying out the necessary checks and tests before the commencement of a new construction project. The Committee observes that under *Article 12(1) of the Convention*, hoisting machines and tackle shall be examined and adequately tested after erection on the site and before use, and under *Article 4*, a system of inspection is to ensure the effective enforcement of laws and regulations relating to safety precautions in the building industry. Noting also the view of the FNV that in general terms, the inspection capacity of the labour inspection services is too limited, the Committee hopes that the Government will indicate the measures taken to ensure that there is maintained a system of inspection adequate to ensure the effective enforcement of laws and regulations relating to safety precautions in the building industry, including section 141(4) of the VBF.

2. In its comments, the FNV also points out that a lifting certificate is not required for operators of cranes at certain relevant work sites (for instance carpenters' yards); in its view, this shortcoming should be remedied. The Committee notes that in its reply, the Government indicates that at the moment only the operators of cranes being used on buildings, construction, earth and hydraulic engineering, underground piping and ducts which are under construction, being installed, extended, renovated or demolished or are undergoing maintenance work, have a hoist licence; the notes on section 212 of the VBF indicate that the desirability of the obligation to have a hoist licence in other branches and sectors of industry is being investigated. However, the Government notes that in practice, hoist crane operators often carry out other work in other sectors where the hoist licence does not apply; the group of operations which is carried out by the non-hoist licence holders is relatively small as a result. Referring to *Article 13(1)* of the Convention, the Committee hopes that the necessary measures will be taken to ensure that every crane driver or hoisting appliance operator is properly qualified, and that the Government will indicate the measures adopted to this end.

II. *Scaffolding*

3. As regards scaffolding, the Committee notes the view expressed by the FNV that while in formal terms, the provisions of the Convention may be met, in practice, the following deficiencies are noted: no specific provisions are made regarding the skills and expertise required of workers who build scaffolds and supervise their construction; there is no periodical inspection of scaffolding equipment nor inspection of scaffolds before building activities start; there is a general obligation for employers to inform workers, but no specific provision for information about scaffolding; the inspection capacity of the Labour Inspectorate is considered insufficient.

In its reply, the Government refers to the provisions of section 212ter of the VBF concerning the experience required of workers who build scaffolds, their supervision by an expert, and the regular checking of scaffolds by an expert. The Government further refers to a preliminary draft of a proposed EC directive to amend the Directive of November 1989 concerning safety and health in the use of tools at the workplace (89/655/EEC); under this draft, construction scaffolds must be approved after each assembly at a new location before the commencement of operations; implementation of this amendment directive is expected before the end of 1994. The Government indicates that the general obligation of employers to clearly inform employees on the nature of their work (section 6, Factories Act) means that scaffolders must be extensively informed about everything concerning the construction of scaffolds, and that more detailed information from government authorities are deemed unnecessary. Finally, the Government considers that the Inspectorate of Works has sufficient capacity for the tasks allocated to it, which do not, however, include checking every scaffold construction, since this is the task of an expert, as indicated in section 212ter of the VBF.

The Committee takes due note of these indications. It hopes that, in conformity with *Article 7(8)* of the Convention, the proposed directive to ensure the inspection of scaffolds after each assembly at a new location will soon be made operative, and that the Government will indicate the measures taken to this end. Furthermore, referring to *Article 3(a)* of the Convention, the Committee hopes that in addition to the general obligation to clearly inform employees on the nature of their work, employers will be required to bring the laws or regulations for ensuring the application of the provisions of the Convention regarding scaffolds to the notice of all persons concerned, i.e. builders and users of scaffolds, in a manner approved by the competent authority. Finally, as regards the capacity of the Labour Inspectorate to ensure the effective enforcement of laws and regulations relating to safety precautions (*Article 4* of the Convention), the Committee, noting also the statistical information supplied on the number of violations, closure orders and occupational accidents in the construction industry and building installations companies, looks forward to the Government's sending further information on the relevant activities of the Inspectorate.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uruguay (ratification: 1954)

The Committee notes the information supplied in the Government's report.

1. At its November 1996 session, the Governing Body adopted the report of the Committee set up to examine the representation made by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and its affiliated organization, the National Single Trade Union in Construction and Similar Activities (SUNCA) under article 24 of the ILO Constitution, alleging non-observance by Uruguay of various Conventions including Convention No. 62.

In the allegations submitted to the Committee, the above-mentioned organizations reported an increase in the number of work-related accidents, including a series of fatal accidents, which have occurred in the construction sector. The complainant organizations indicate that the construction industry is one of the most important sectors and absorbs the highest percentage of the workforce in the country; they claim that, in order to reduce costs and increase competitiveness, private enterprises in the sector restrict to a minimum the resources covering expenditure on prevention in the field of safety and health, resulting in a significant increase in violations of the national legislation respecting safety and health. The allegations refer to 14 fatal accidents which occurred between October 1993 and May 1994, all of which were due to a failure to comply with the safety standards that are in force, as recorded in the respective reports of the labour inspectorate. In the opinion of the above organizations, this shows that the labour administration is ineffective, inefficient and incapable of discharging its duties with regard to the prevention of accidents, particularly as regards compliance by employers with the legal requirements. In their opinion, the problem arises because the Government has not provided the labour inspectorate with the necessary human and material resources to discharge its duties. These circumstances are indicative of a failure to comply with the Convention.

In its comments, the Government states that the construction industry experienced a sustained period of growth between 1991 and 1994 and is employing an increasing number of workers. In its opinion, although there has admittedly been an increase in the number of accidents, this is a result of the greater number of workers engaged. In this respect, the Government indicates that in the construction industry, there was a decrease in the number of accidents. Analysis of accident figures shows that the underlying reason for them was the rapid growth in the industry leading to the engagement of unskilled workers. Other contributory factors are the existence of subcontracts that are not coordinated by the principal enterprise and the growth of informality in the construction industry. According to the Government's communication, since 1993, the General Inspectorate has had a Work Environment Department, with a specialized unit for the construction sector composed of a group of seven specially trained inspectors. The Government also states that, with a view to consolidating its preventive functions, the

General Labour Inspectorate concluded a series of agreements with local governments to base inspectors throughout the country. With the same objective, a tripartite coordination and advisory committee was established in order to improve cooperation and negotiations with the parties on this subject. Finally, the Government reports the establishment of a tripartite committee in the field of safety and health in the construction industry which adopted new safety and health standards for the sector. These standards determine responsibilities more precisely, broaden and make more specific the technical standards on scaffolding, and make it compulsory to maintain occupational safety services.

The Committee set up to examine this representation concluded that, despite the efforts made, the high rate of accidents and the high number of fatal accidents in the construction sector raises questions concerning the application of the Convention in practice; it also considers that the Government will have to increase its efforts to guarantee in practice the protection provided by the Convention to workers in the construction industry. In its recommendations, the Committee urges the Government to take the necessary measures to ensure that the current standards respecting health and safety for all enterprises in the construction sector are applied, with particular attention to enterprises operating under subcontracts, and to reinforce the labour inspection system and the other administrative bodies responsible for supervising compliance with safety and health standards.

The Committee requests the Government to supply information about the measures taken to give effect to the recommendations made by the above-mentioned Committee to: (i) ensure that legislation respecting health and safety is applied to all the workers engaged in the construction industry; (ii) secure compliance with the safety and health rules that are in force by all the enterprises in the construction sector, with particular attention to enterprises operating under subcontracts; (iii) ensure that occasional workers receive training on health and safety; and (iv) reinforce the labour inspection system and the other administrative bodies responsible for supervising compliance with safety and health rules, including the systematic and thorough investigation of any denunciations received, as well as the imposition of the penalties provided.

2. The Committee notes that national legislation and the efforts made in practice would appear, at first sight, sufficient to give effect to certain provisions of the Convention. Nevertheless, the Committee observes that there are reservations on various aspects of the process for applying this instrument.

With respect to legislation, the Committee draws the Government's attention to the need to formulate more detailed regulations for the purpose of giving effect, in conformity with *Article 3 of the Convention*, to the Model Code annexed to the Safety Provisions (Building) Recommendation, 1937. In such regulations it would be essential to prescribe, in accordance with Regulation 41 of the Model Code, that every worker shall be obliged to: (i) cooperate with the employer in carrying out the regulations; (ii) remedy or report forthwith to the employer or foreman any defect that he may discover in the plant or appliances, or any action liable to cause an accident; (iii) make proper use of all safeguards, safety devices or other appliances furnished for his protection; and (iv) take the necessary precautions for his own safety and for the safety of any other person on the site.

The application of these provisions in practice could result in the prevention of accidents. In this context, the Committee notes that in its comments on the application of Convention No. 155 in the construction industry, the Latin American Central of Workers (CLAT) indicates a very high number of occupational accidents, including 19 fatal accidents which occurred in 1995 and the first two months of 1996. In view of this serious situation, the CLAT considers it necessary for the Government to put into practice a more integrated plan on the question of respect for occupational rights in the construction sector and to ensure respect for a right as fundamental as the right to life for workers engaged in the construction industry.

The Committee requests the Government to supply information on any progress made in the near future in respect to new legislation and the application of the Convention in practice.

[The Government is asked to report in detail in 1997.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Guinea, Peru, Rwanda, Zaire.*

Convention No. 64: Contracts of Employment (Indigenous Workers), 1939

A request regarding certain points is being addressed directly to *Guatemala.*

Convention No. 67: Hours of Work and Rest Periods (Road Transport), 1939

Peru (ratification: 1962)

1. The Committee notes the communication sent by the Government in reply to its previous observation. It notes with satisfaction the adoption of Presidential Decree No. 05-95-MTC regulating the public interprovincial road transport (passenger omnibus) service, which establishes, in section 57, a maximum of five hours for any continuous period of driving, in accordance with *Article 14 of the Convention.* It also notes that the same section requires the employer to keep a record of the hours of work and rest periods of the staff of each vehicle *(Article 18, paragraph 2).*

2. The Committee observes, however, that section 57 above allows up to 12 hours' driving to be accumulated in each 24-hour period. The Committee recalls that, according to *Article 7* of the Convention, hours of work may not exceed eight in the day. It requests the Government to indicate how the personnel concerned can obtain the 12 consecutive hours of rest prescribed by *Article 15, paragraph 1,* of the Convention.

3. Subject to the comments it made previously, the Committee asks the Government to adopt similar regulations, inter alia for private road transport enterprises. Furthermore, it recalls that for many years it has been commenting on the application of *Articles 7; 11; 13, paragraph 2; 15; 16, paragraph 1; and 18, paragraph 3,* of the Convention. The Committee trusts that the Government will take the necessary measures at the earliest possible date to give full effect to these provisions and that in its next report it will provide full and detailed information on progress made.

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to the following States: *Djibouti, Netherlands, Portugal.*

Convention No. 71: Seafarers' Pensions, 1946

Peru (ratification: 1962)

The Committee notes the observations made by the Union of Crew Members of Maritime Vessels for the Protection of Workers, dated 19 April 1996, in which, among other matters, it states that the Liquidating Board of the Peruvian Steamship Company (a limited liability company under liquidation) did not comply with the requirements relating to pensions in accordance with Legislative Decree No. 20530 of 1974. According to the above Union, 187 workers were excluded from receiving pension benefits on the grounds that they had not completed 30 years of service, despite the fact that they had already been receiving their pensions for three years. In a communication dated 6 May 1996, these observations were brought to the knowledge of the Government, from which no reply has yet been received. In these circumstances, the Committee hopes that the Government will include in its next report the indications that it considers necessary concerning the observations made by the above workers' organization relating to the obligations deriving from the Convention.

[The Government is asked to report in detail in 1997.]

Convention No. 73: Medical Examination (Seafarers), 1946

Requests regarding certain points are being addressed directly to the following States: *Djibouti, Finland, Japan, Republic of Korea, Malta, Ukraine*.

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the following States: *Ghana, Guinea-Bissau*.

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In the comments it has been making for more than 20 years, the Committee has drawn the Government's attention to the absence of any provisions in laws or regulations to give effect to *Articles 2, 3, 4, 5, 6 and 7 of the Convention*.
>
> On several occasions the Government has referred in its reports to the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare, which was to give effect to the above-mentioned provisions of the Convention. In its latest report the Government provides information on specific activities for organizing the operation of medical services in enterprises, which have led to the preparation of a Pilot Plan for a Medical Reconnaissance Service. According to the Government, the Pilot Plan will contribute to providing information and experience for implementing the Regulations on Medical Services in Enterprises which have already been drafted. According to the Government, the Plan should go into operation in the early part of 1995 after the most representative

employers' and workers' organizations have been consulted. The Committee's comments, the Government concludes, will then be given effect.

The Committee takes note of this statement. It hopes that the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare and the Regulations on Medical Services in Enterprises will enable provisions to be adopted on the medical examination of young persons employed in industry, which will apply all the provisions of the Convention. The Committee asks the Government to provide information on progress towards the adoption of the above-mentioned Regulations and on any other measure taken to ensure compliance with the Convention.

The Committee suggests that the Government may wish to call upon the Office for technical assistance in this matter.

Article 2. The Committee draws the Government's attention to the fact that the medical examination provided for in the Convention is to certify not only that the young person is in good health, but also that he is fit for the work in question.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946

Cameroon (ratification: 1970)

In earlier comments, the Committee noted the lack of any provisions in the national legislation enabling the Convention to be applied to children and young persons exercising an independent activity — employees or apprentices being covered by the provisions on medical examinations of Order No. 17 of 27 May 1969. It asked the Government to provide information on the measures taken or envisaged to ensure application of the Convention to this category of children and young persons. In its reports, the Government has stated periodically its intention to take measures to this end. At the same time, the Government stressed that the independent activities of children and young persons are carried on in the informal sector which is outside the control of the labour inspectorate and that applying the Convention to this sector cannot be envisaged until some degree of control is exercised over it.

The Committee notes that at the Conference Committee in June 1995 the Government representative recognized the good reason for the request to extend the medical examination for fitness for employment of children and young persons to all categories of young workers. He stated that the Government was aware of the necessity of this examination for children and young people.

While noting the practical difficulties of extending the medical examination for fitness for employment to children and young persons in the informal sector, raised by the Government in its reports and by the Government representative at the Conference, the Committee recalls that children carrying on an independent activity are covered by the scope of the Convention *(Article 1, paragraph 1)*. The Committee asks the Government to indicate the measures taken to ensure application of the Convention by extending the medical examination to children and young persons exercising an independent activity. It suggests that the Government might envisage the possibility of calling on the ILO for technical assistance.

Convention No. 81: Labour Inspection, 1947

General observation

The Committee has noted that annual inspection reports do not always contain the information required by Article 21(f) and (g) of the Convention. The Committee wishes to draw the attention of governments to the ILO publication "Recording and notification of occupational accidents and diseases" (ILO, 1996) containing practical guidelines. The guidelines should be treated as basic requirements for the collection, recording and communication of reliable data on occupational accidents and diseases and related statistics. They should be of assistance to the competent authorities in setting up appropriate systems for the recording and notification of occupational accidents and diseases, and serve as a useful guide for joint action by employers and workers for the prevention of such accidents and diseases.

The Committee hopes that governments encountering difficulties will draw on the guidelines to ensure full application of the provisions of Article 21(f) and (g) of the Convention. It asks governments to provide information on progress made in this respect.

Argentina (ratification: 1955)

1. The Committee notes Decree No. 772/96 of 15 July 1996 which assigns to the Ministry of Labour and Social Security the functions of supervision and central authority for labour inspection throughout the national territory (section 1). It notes that in exercise of these functions, the ministry shall ensure that the various inspection services in the country comply with the standards governing them and, particularly, with the requirements of Conventions Nos. 81 and 129, and shall exercise the other functions assigned to the central authority by the Conventions (section 1(a) and (b)).

The Committee recalls that in its previous commentaries it noted that it had not received an annual report on the activities of the inspection services since 1984 and expressed the hope that such a report would be transmitted to the ILO within the time-limit set by *Article 20* and that it would contain all the information required by *Article 21*.

The Committee hopes that the new structure will make it possible to progress in the application of the Convention in general and of Articles 20 and 21 in particular. The Committee requests the Government to keep it informed in this respect.

2. The Committee notes the observations made by the Union of United Maritime Workers (SOMU) of 2 November 1995 and 31 May 1996 relating to communications received previously from the same organization to which the Committee had referred and which concern the non-compliance with certain legal provisions relating to conditions of work and the protection of workers. The Committee requests the Government to make its comments on the allegations, taking into account that the labour inspectors shall secure the enforcement of such provisions as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions *(Articles 3, paragraphs 1(a) and 16)*.

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that, according to the Government's report for the period ending June 1993, it was considered practical to establish tripartite commissions to promote

collaboration between officials of the labour inspectorate and employers and workers or their organizations (*Article 5(b) of the Convention*). However, it notes that the introduction of these structures required the raising of the level of legal and vocational training of labour inspectors (*Article 7*), which could be achieved through a programme of technical assistance from the ILO Regional Office in Lima in the context of one or more of the projects planned for 1994. The Committee would be grateful if the Government would indicate in its next report the results of the measures adopted to promote the above collaboration and provide the necessary training, as set out in these provisions of the Convention.

The Committee notes the information supplied by the Government in its report to the effect that the working conditions of labour inspectors have improved in comparison to those prevailing in 1989, except as regards urban transport, due to the limitations of the national budget. The Committee would be grateful if the Government would provide information on the improvements made in these working conditions and if it would indicate the measures which have been taken or are envisaged to furnish labour inspectors with the transport facilities necessary for the performance of their duties (*Article 11*).

The Committee would be grateful if the Government would indicate in its next report, taking into account the fact that the number of labour inspectors has to be sufficient to secure the effective discharge of the duties of the inspectorate, the manner in which it is ensured that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions (*Articles 10 and 16*).

The Committee notes that it has not been possible to transmit to the Office an annual inspection report, but that the Government, according to the information supplied in its report, proposes to give effect to *Articles 20 and 21* of the Convention as soon as possible by establishing a system of statistics covering the annual activities of the labour inspection services and by compiling a classified and quantitative annual report, which it hopes to formulate in the context of the technical assistance projects referred to above that were planned as of 1994. The Committee trusts that the Government will transmit to the Office as soon as possible an annual inspection report in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1989)

The Committee notes the observations made by the National Union of Labour Inspectors (SINAIT) in a communication of 27 May 1996 alleging non-compliance with *Article 6 of the Convention*, as well as the Government's reply to these observations dated 9 October 1996.

In its communication, the SINAIT alleges that the Government allows improper external influences to jeopardize the performance of labour inspection duties by appointing to senior posts in the regional labour offices, to which the inspectors are subordinate persons, clearly connected with the enterprises which must be inspected by these inspectors. This exposes the inspectors to direct or indirect reprisals when they verify that in certain enterprises the methods applied are contrary to the law and regulations, including when working conditions are bad or workers are subject to forced labour.

The SINAIT refers in particular to the appointment as the head of the Regional Labour Office of the State of Piaui the niece and lawyer of the director of an enterprise, federal deputy and owner of an enterprise in which very difficult working conditions have been denounced. Both the deputy-governor of the State and the trade union have drawn the attention of the highest authorities to this situation, but the situation has not changed, rendering it impossible for the inspectorate to exercise supervision over all the enterprises of the State of Piaui, and particularly those which have clearly not complied with the legislation in force. According to the union, the regional delegate harasses inspectors, and even reduces their wages. The union considers that the government authorities are thus rendering vulnerable the fundamental guarantees of workers.

The Committee notes that in its reply, the Government states that the labour inspectors are public servants, recruited by competitive examination, appointed after a period of two years, who can be dismissed only after a disciplinary procedure. They have stability of employment, are independent of any political changes and are not subjected to outside influences. The case mentioned by the union has been studied thoroughly and it has been concluded that there was no political favouritism in the labour inspectorate in regard to this enterprise. The Government adds that appointments to and dismissals from the post of regional labour delegate are free and the holder retains his post for as long as he enjoys the confidence of the higher authorities. In regard to the allegations to the effect that there has been harassment and retention of wages, the Government refers to the case of a public official of the regional delegation, indicating that it has decided to re-establish the wage. The Government considers, in conclusion, that it has not remained unaware of the questions raised by the SINAIT.

The Committee recalls that under *Article 6* of the Convention, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of Government and of improper external influences. The Committee notes that while the inspectors are public officials, they seem to be subject to the hierarchical authority of regional delegates who may be appointed and dismissed at the whim of the higher authority, which is difficult to reconcile with the necessary independence. The Committee requests the Government to supply information on the steps taken or contemplated to guarantee labour inspectors true independence, in particular by protecting them from reprisals. As to the particular case mentioned by the SINAIT, it requests to Government to indicate how the application of *Article 6* of the Convention is guaranteed in practice in regard to supervision of the enterprises in the area of the regional directorate in question.

Cameroon (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 13, paragraph 2(b), of the Convention.* For many years the Committee has been requesting the Government to take the necessary measures to give effect to this Article of the Convention, which provides that labour inspectors shall be empowered to make orders requiring measures to be taken with immediate executory force in the event of imminent danger to the health or safety of the workers. Since 1978, the Government has been indicating that the necessary measures were being taken to amend the law. The Committee notes the Government's indication in its last report that these measures have not yet been taken and expresses the firm hope that the necessary modifications will be adopted in the near future.
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> *Articles 16, 20 and 21.* The Committee once again notes that no annual inspection report has been provided since those relating to the years 1978 and 1979. It recalls that these reports are an essential means of determining how the inspection system is working in practice and whether workplaces are being inspected as often and as thoroughly as necessary. It once again hopes that the Government will transmit to the Office, within the time-limits set out in the Convention, annual reports on the activities of the inspection services and that they will contain all the information required by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Comoros (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information provided by the Government in its report, as well as the information supplied in the reports on the role and situation of the labour inspectorate in Moroni and Anjouan. It notes that this information points to the paralysis of labour inspection in Ngazidja (Grand Comoros) and Ndzouani (Anjouan) and the need to adopt texts to give effect to the provisions of the Labour Code. The Committee hopes that the Government will give the necessary attention to resolving the problems raised in these reports so as to ensure that the very existence of labour inspection is not threatened and to ensure that the duties entrusted to labour inspectors can be discharged (*Articles 1 and 3 of the Convention*).
>
> The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ghana (ratification: 1959)

Articles 11 and 16 of the Convention. The Committee notes the information provided by the Government in its report which indicates that the number of inspectors and inspection visits per year have dropped respectively from 171 (in 1991) to 98 (in 1995) and from 907 (in 1991) to 413 (in 1992). It indicates also that four of the five vehicles at the disposal of the labour inspectors have broken down and that the reimbursement to labour inspectors of their travelling expenses is delayed. The Committee requests the Government to take appropriate measures to increase the number of the operative staff sufficiently to ensure that workplaces are inspected as often and as thoroughly as is necessary as well as to improve the means of transport and the reimbursement of expenses. The Committee hopes that the Government will provide information on any improvements made in this regard as well as in relation to means of transport and reimbursement of expenses.

Articles 20 and 21 of the Convention. The Committee notes that, although the Government has provided in its report some statistical information on the activities of the labour inspectorate, it is nevertheless bound to note once again that no annual report on labour inspection has been received by the ILO and that the most recent one concerned the period 1973 to 1974 and was sent to the Office in 1980. The Committee recalls that the preparation and publication of periodic inspection reports, as required by the Convention, is an essential means of determining the manner in which the instrument is applied and the remedial measures that need to be taken. The Committee trusts that the appropriate measures will be taken to ensure that annual inspection reports, containing precise information on all the matters enumerated in Article 21, are published and transmitted to the ILO within the time-limits set out in Article 20.

Guinea (ratification: 1959)

With reference to its previous comments, the Committee notes the information provided by the Government in its report. It notes that, according to the information contained in the activities report, the labour inspectorate has identified the enterprises and establishments subject to its control, which increased from 346 in 1992 to 446 in 1995, and that during the period October 1994 to June 1995 around 58 per cent of establishments were inspected. The Committee also notes, however, that the statistics provided show a preponderance of conciliation activities in comparison with controls by the labour inspectorate.

The Committee requests the Government to indicate the measures which have been taken or are envisaged to ensure that any other duties entrusted to labour inspectors do not interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers (*Article 3 of the Convention*). The Committee also notes that the Government's report does not contain the detailed information on the status and conditions of service of inspection staff that is necessary to enable it to assess the independence and impartiality of labour inspectors in the discharge of their duties (*Article 6 of the Convention*). The Committee requests the Government to provide detailed information in this regard.

The Committee is addressing a request directly to the Government on other matters.

India (ratification: 1949)

The Committee notes the observations respectively made by Bijli Mazdoor Panchayat regarding the conditions of life and work of workers employed in the "Ash Area" by the Gujarat Electricity Board and by the Federation of Unorganized Migrant Labour of Goa (FUMLOG) concerning precarious working conditions of migrant workers employed in Goa. The Committee also notes the Government's comments on the Bijli Mazdoor Panchayat's observations.

1. The Committee notes that, according to Bijli Mazdoor Panchayat, about 4,000 Scheduled Tribe workers, the majority being women (all belonging to the low caste called "adivasis"), are forced to work in inhuman conditions in the "Ash Area" by the Gujarat Electricity Board, a statutory board of the state government of Gujarat, notwithstanding that the "Ash Area" is attached to the Thermal Power Station and is a factory under the Factory Act. Bijli Mazdoor Panchayat states in particular that workers work in hazardous conditions without safety equipment for long hours without being paid for overtime. It further states that the factory inspectorate, the labour commission and other government agencies have taken no action for the implementation of the Factories Act, Industrial Disputes Act, Minimum Wages Act, Bonus Act, and Payment of Gratuity Act. Thus, Bijli Mazdoor Panchayat has filed a petition to the High Court of Gujarat for the implementation of various labour laws in the State of Gujarat.

In reply to the Bijli Mazdoor Panchayat's observations, the Government states inter alia that the complaint is not about the regular company (Thermal Power Station, Ukai) and its 2,150 regular employees, but is specifically regarding workers who are working outside the factory premises to separate burnt coal from the flowing water. The Government specifies that the Thermal Power Station, Ukai, is a government factory owned by the Gujarat Electricity Board which has given the work of lifting the burnt coal ash to a firm which employs 200 persons known as Mukadams, who have not been registered under the Contract Labour (Regulation and Abolition) Act. The Government indicates that no inspections have been carried out before the filing of the complaint. The Assistant Commissioner of Labour and the Government Labour Officer, Surat, have since visited the workplace and carried out an inspection. These officers have made inspection remarks under the Contract Labour Act against the Gujarat Electricity Board and the Ukai Thermal Power Station as principal employers and the prosecution proposal against them is under consideration by the Government. The Committee further notes that the proposal for action under the Payment of Gratuity Act is also under consideration and that the proposal under the Equal Remuneration Act, 1976, against the contractor was sanctioned by the Commissioner of Labour on 20 August 1996. It finally notes that no inspection has been made under the Factories Act as the matter is pending in court for a decision as to whether the Act applies to the "Ash Area" or not.

The Committee takes due note of these indications and requests the Government to indicate any development with respect to the above-mentioned writ petition of the Bijli Mazdoor Panchayat before the High Court of Gujarat. It also requests the Government to indicate any progress regarding the various prosecution proposals under its consideration.

2. The Committee notes that, according to the Federation of Unorganized Migrant Labour of Goa (FUMLOG), migrant workers are employed by factory owners in Goa under very precarious conditions of work, safety and living, without any social security protection and, in most cases, without being paid the minimum wage. The Committee notes that the Government has provided no information regarding these observations. It invites the Government to do so.

Libyan Arab Jamahiriya (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls the discussion which took place in the Conference in 1992 and the Government's report in which indications were given that the inspection machinery was undergoing reorganization and that new inspectors would be named after a period of training. It further notes the general information provided with respect to the number of inspections carried out and violations recorded in 1991 which were neither published (as required by *Article 20 of the Convention*) nor do they contain all the information required (by *Article 21*). It trusts measures will be taken shortly to ensure that the Convention is fully observed, and that annual labour inspection reports containing information on the work of the labour inspection services, including statistics on the subjects listed under Article 21, will be published and transmitted within the time-limits as required by Article 20.
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> The Committee further notes that the Government's report refers variously to labour inspectors, employment inspectors and municipal inspectors. The Committee would be grateful if the Government would indicate what are the status, conditions of service and of recruitment, the means used to establish the qualifications as well as any arrangements made to ensure the initial and subsequent training of these inspectors.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1963)

Article 6 of the Convention. With reference to its previous comments concerning the status of inspection staff, the Committee notes the information supplied by the Government in its reports. It notes in particular that the Directorate of the Public Service has endeavoured to prepare a draft decree on the conditions of service of the various sections of the public service which would take into account the situation of labour inspectors and controllers, as the Government indicated previously. The Committee recalls that the Government has been reporting the preparation of conditions of service for inspection staff for over 20 years; that a draft text was prepared with the assistance of the ILO taking into consideration the provisions of the Convention and the economic situation of the country; and that the matter was examined by the direct contacts mission which visited the country in 1992. The Committee also recalls that inspectors must benefit from the independence and impartiality that are necessary for the discharge of their duties. It trusts that the necessary measures will be taken in the near future and that the Government will provide information on any development relating to the adoption of the conditions of service of inspection staff.

The Committee is once again addressing a request directly to the Government concerning the application of *Articles 7, 10, 11, 16, 20 and 21* of the Convention.

Morocco (ratification: 1958)

Further to its previous observation, the Committee notes the information supplied by the Government.

Article 2 of the Convention. The Committee notes the information supplied by the Government concerning visits carried out by the labour inspectorate in industrial establishments. It asks the Government to provide more detailed information on inspection activities, particularly in carpet factories where child labour is widespread according to information provided earlier by trade union organizations.

Article 3, paragraph 1(c). The Committee indicates that periodical meetings are organized with regional delegates under the chairmanship of the Minister of Employment and Social Affairs, to present and make proposals on shortcomings or difficulties noted by labour inspectors due to the lack of legal provisions. The Committee notes that its comments on this point are taken into account by section 453 of the draft Labour Code. It asks the Government to provide information on the status of the above-mentioned draft, and the action taken on issues raised in the reports of regional delegates in 1993.

Article 3, paragraph 2. The Committee notes that, according to the figures supplied in the Government's report, the conciliation activities undertaken by labour inspectors, particularly with regard to individual labour disputes, appear considerable. The Committee refers to paragraphs 99 to 102 of its 1985 General Survey on labour inspection regarding the need to ensure that there is no ideal compromise as concerns the enforcement of legal provisions, which is one of the primary functions of the labour inspectorate. It asks the Government to indicate the measures taken or envisaged to ensure that the conciliation duties of labour inspectors neither interfere with the discharge of their main duties nor impair in any way the authority or impartiality which is necessary in their relations with employers and workers.

Articles 10 and 11. The Committee notes with interest the information supplied by the Government concerning the new means available to labour inspectors which, according to the Government, are likely to increase their activities. The Committee asks the Government to provide information on the effects of the new means on the activities of the labour inspectorate.

Articles 20 and 21. The Committee notes the summary of the reports of the labour inspection delegates and the information and statistics provided in the Government's report. With reference to its previous comments, the Committee asks the Government to take the necessary steps to ensure that annual inspection reports are published and sent to the Office within the time-limit set by Article 20 of the Convention, and that they contain all the information required by Article 21.

Peru (ratification: 1960)

In its previous comments the Committee noted a communication of 6 November 1995 from the Association of Labour Inspectors of the Ministry of Labour and Social Development alleging non-compliance with *Articles 6, 9, 10 and 16 of the Convention*. The Committee notes the comments made by the Government on these observations in a communication of 12 January 1996. The Committee also notes the further allegations made by the Association of Labour Inspectors in communications of October and November 1996 which were sent to the Government for comment on 31 October, 26 November and 5 December 1996 respectively.

1. In the observations it submitted in 1995, the Association of Labour Inspectors alleged non-compliance with Articles 6 (stability of employment), 9 (association of duly qualified technical experts and specialists), 10 (sufficient number of inspectors) and 16 (frequency and thoroughness of inspections).

Article 6. The Association indicated that, in 1992, inspectors were obliged to submit once again to competitive examination for the jobs that they already held and that six monthly evaluations introduced in 1992 have resulted in a reduction in the number of inspectors; the Association alleges that neither the stability nor the independence of inspection staff is guaranteed in regard to changes of government and external influences. The Committee notes the Government's indications in its reply of 12 January 1996 to the effect that stability and independence are ensured when public officials show proof of integrity and efficiency and that the decisions adopted after the six-monthly evaluations may be contested through administrative channels and the courts. The Committee notes that according to the Government's reply it would appear that the inspectors were dismissed because the evaluation of their work was not satisfactory. The Committee notes, however, that these officials seem to have had many years of service and that if the Government considered them inadequate for the service they could have been given appropriate training in the performance of their duties in accordance with *Article 7, paragraph 3*, of the Convention. The Committee asks the Government to send information on the measures taken or contemplated for training of serving inspectors.

Article 9. The Committee notes that the Association alleged that following an internal reform the Directorate of Occupational Safety and Health has been abolished and the Labour Inspectorate is no longer supported by specialists and experts in occupational health and safety. The Committee notes that in its reply of 12 January 1996, the Government recognizes that the safety and health inspection service no longer has an adequate number of staff but that under Decree No. 04-95-TR the inspection authorities can request the support of appropriate public services. The Committee notes that the participation of specialists is provided in a very general way in the procedure and that, furthermore, the Decree has been repealed by Decree No. 04-96-TR of 11 June 1996. The Committee requests the Government to supply information on the measures taken or envisaged to ensure the participation of duly qualified specialists and technicians in order to ensure the application of the legal provisions relating to health and safety.

Article 10. The Association of Labour Inspectors alleged that the number of inspectors has been reduced by 33 per cent of the total number of inspectors employed in the country in 1991 (70 inspectors for a population of 4 million workers, approximately), that it is insufficient to secure the effective discharge of the duties of the inspectorate, and that the number of inspections carried out is very low (barely 600 ordinary inspections in 1995). It also alleged that the inspectors are assigned administrative tasks such as document filing and archiving and others which bear no relationship to their inspection duties. The Committee notes that in its reply the

Government considers that the Convention leaves to the ratifying State the decision regarding the number of inspectors it deems necessary to carry out inspection work; it also states that the inspectors do not carry out administrative tasks. The Committee recalls that the number of inspectors must be sufficient to secure the effective discharge of inspection duties. The allegations of the labour inspectors seem to indicate that filing documents and other administrative work which is not linked directly or indirectly with the work of controlling the application of labour standards and which is imposed on inspectors at a time when, according to available statistics, inspections have decreased sharply, hinder or even prevent the effective exercise of the inspection service. The Committee requests the Government to supply information on the measures taken or envisaged to ensure the application of this Article of the Convention.

Article 16. The Association of Labour Inspectors alleged that the labour inspection services are paralysed and that there is a danger that the inspectors will be replaced by persons recruited through an employment agency. The Committee notes that in its reply of 12 January 1996 the Government rejects the allegation that these services are paralysed and states that a reform of the inspection system is in progress, with the aim of emphasizing the preventive aspect of inspection. The Committee notes from the statistics supplied by the Government that there was a sharp drop in inspections in September and October 1995 which was exacerbated in November and December. The Committee requests the Government to indicate the measures taken to ensure that inspections are carried out as often and as thoroughly as is necessary.

2. The Committee notes the further allegations submitted by the Association of Labour Inspectors in October and November 1996 and notes that the Association refers specifically to the emergency Decree of 29 March 1996, No. 015-96, on the "Labour Inspection and Legal Guidance Programme". This provides for the restructuring of labour inspectorate duties, comprising the complete modification of its operative and administrative parts and revamping current procedures: employment contracts may be concluded with non-qualified persons on a temporary basis to carry out inspection duties; all reports on inspection procedures prior to 31 March 1996 are closed (including, according to the Association of Labour Inspectors, the reports of 455 scheduled inspections conducted in 1995); fines imposed before 31 December 1995, up to an amount of 1,000 soles are cancelled (according to the complainant organization this represents some 95 per cent of the fines imposed); a directive issuing the Decree (Directive No. 01-96-DNRT) states that the files set aside from 2 January 1996 shall be considered as forming part of the annual inspection plan. The Association provides a list of 20 labour inspectors dismissed on 19 February 1996 and nine inspectors dismissed before that date. It denounces the replacement of labour inspectors by staff not included on the Ministry organizational chart nor on the salary roll who are working on service contracts. According to the Association, the temporary staff replace the inspectors in their inspection duties while the inspectors are assigned to administrative and manual tasks. The Committee requests the Government to make its comments on these supplementary allegations of the Association of Labour Inspectors.

3. The Committee notes that the above-mentioned "Labour Inspection and Legal Guidance Programme" ends on 31 December 1996. It requests the Government to provide information on the measures adopted and results achieved under the programme.

4. *Articles 20 and 21 of the Convention.* The Committee recalls that in its previous comments it noted that no annual report on labour inspection has been received since the ratification of the Convention, 35 years ago. The Committee emphasizes once again that the preparation and publication of period reports on the activities of the inspection services is an essential means for assessing how the Convention is applied and for

planning the corrective measures which should be taken. It trusts that all appropriate measures will be taken without delay so that annual reports, containing the information required under Article 21, will be published and sent to the ILO within the time-limits laid down in Article 20.

Romania (ratification: 1973)

With reference to its previous comments, the Committee notes with satisfaction that pursuant to Act No. 90/23 of 23 July 1996 on labour protection, inspectors must observe confidentiality regarding the source of information with respect to requests or complaints relating to defective installations or a breach of legal provisions, and shall not intimate to any legal or natural person that a visit of inspection was made following a complaint; this amendment brings legislation into conformity with *Article 15(c) of the Convention.*

Spain (ratification: 1960)

The Committee notes the information supplied by the Government in its report, the observations of the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT) and the Government's reply to these observations. The Committee recalls that its comments and the discussions held at the Conference Committee in 1992 concerned the strength and means of the labour inspectorate, cooperation between the inspectorate and employers' and workers' organizations, the powers of labour controllers and supervision of the application of collective agreements.

1. With regard to the number of inspectors and workplaces inspected *(Articles 3, 10 and 16 of the Convention)*, the Committee notes the Government's indication that measures have been take to increase the strength and the material resources of the inspectorate. The Committee notes that, according to the 1994 annual inspection report, the strength of the inspectorate increased by 4.85 per cent over 1993 (51 inspectors and 16 controllers). The Government has set priorities for the inspection of workplaces and a considerable increase in the number of visits has been recorded. Under the remuneration system for these employees, the wage is supplemented according to productivity which is measured in terms of the attainment of set objectives, including the number of visits. The Committee notes that particular attention has been paid to the construction, maritime and catering sectors. It notes that, according to the annual report, the priority areas are occupational health and safety and curbing clandestine employment which accounted for almost two-thirds of inspection activity. The Committee asks the Government to continue to provide information on the numbers of inspectors, the priority areas and the visits carried out.

2. As concerns cooperation between labour inspectors and employers' and workers' representatives (*Article 5(b)*) the Committee notes the Government's indication that this is ensured by the presence of employers' and workers' representatives during inspection visits, by a consultation and information service organized in inspection offices and by a variety of meetings with the representatives.

3. With regard to the application of collective agreements, the Committee notes that, under the Act on offences and sanctions in the social organization, the labour inspectorate is responsible for checking actions or omissions of employers which are in breach not only of the provisions of laws and regulations but also of the labour and health and safety requirements of collective agreements. The Committee notes the Government's indication that a circular has been adopted on this subject. It asks the Government to provide a copy of the circular.

4. With reference to its previous comments in which it noted that, according to the observations made by the CC.OO., no "presumption of certainty and veracity" is established concerning the acts of controllers, which weakens the inspection system, the Committee notes the Government's indication that section 27 of the Finance Act for 1992 (No. 31) has amended section 52 of Act No. 8 of 1988 by adding a paragraph establishing a presumption of authenticity of the records of violations made by controllers where the facts have been duly proved. The Committee asks the Government to indicate any other measures taken or envisaged to give labour controllers the same powers as actual labour inspectors to enforce the provisions of the law.

5. The Committee notes the Government's indication that a national inspection corps represented by the central corps of labour and social security inspectors has been established to maintain the unity of the inspection corps in the country, following the transfer of its powers to the autonomous communities. It also notes the information to the effect that certain attributions of the labour inspectorate now come within the jurisdiction of labour tribunals ("jurisdicción social"), (for example the authority to declare a job toxic, arduous, dangerous). The Committee asks the Government to provide additional information on the reorganization of the labour and social security inspectorate and on the effects of the various reforms.

In addition, the Committee notes that the general labour and social security inspectorate is in the process of preparing a complete reform of the inspection system to replace the present system. The Committee asks the Government to provide information on all developments in this respect. Recalling that Spain has also ratified the Labour Administration Convention, 1978 (No. 150), the Committee hopes that constructive consultations and cooperation will be established in this area between the Government and the employers' and workers' organizations.

Sri Lanka (ratification: 1956)

The Committee notes the information supplied by the Government in its report in reply to the observations made by the Ceylan Workers' Congress (CWC) and the Lanka Jathika Estate Workers' Union, as well as the comments made previously by the Jathika Sevaka Sangamaya.

Article 3, paragraph 1(a), of the Convention. The Committee recalls the observations made by the Jathika Kevaka Sangamaya concerning the working conditions and special risks and hazards faced by workers in the growing number of self-employed small industries and the fast-growing industries in the export processing zones, using highly sophisticated equipment and dangerous chemicals and resorting to extra hours of work for women and young persons, including night work. The Committee notes the information supplied by the Government concerning the legislation to protect children, young people and women. It also notes that, according to the Government, young people are not allowed to work in export processing zones. It asks the Government to provide information on the supervision of the application of the legal provisions to protect children and young people, particularly the Employment of Young Persons and Children Act, No. 47 of 1956, and on the activities of the labour inspectorate in export processing zones.

Article 5(b). The Committee refers to the observations made by the Lanka Jathika Estate Workers' Union to the effect that a national programme should be drawn up by the state authorities concerned, in conjunction with the relevant employers' and workers' organizations, on a tripartite basis, in a joint effort to improve coordination and cooperation with a view to better application of the Convention. The Committee asks the

Government to indicate the measures taken or envisaged to encourage cooperation between labour inspectors and employers and workers or their organizations.

Articles 10 and 16. In its previous comments, the Committee noted the Government's indication that measures had been taken to reinforce the labour inspectorate by creating 50 new posts. The Committee notes the observation by the Lanka Jathika Estate Workers' Union to the effect that this does not suffice to meet the demands of the rapidly expanding industrial sector. It notes the Government's indication that the matter of the increase of the number of inspectors and the shortage of funding for labour inspectors is being studied. The Committee also refers to the observations made previously by the Jathika Kevaka Sangamaya concerning working conditions in garment factories employing women. It notes the Government's indications in its report that 1,089 inspection visits were carried out in 1993 and 1,389 in 1994 in the garment manufacturing sector and that measures will be taken to strengthen the labour inspectorate in all sectors of the economy. The Committee also notes that in the mines and quarries sector there were approximately 1,240 inspections in 1993. The Committee hopes that the Government will take the necessary steps to increase the number of labour inspectors as well as the number and frequency of inspections, and asks it to provide information on the measures taken as a result of its examination of the question of the increase of the number of labour inspectors and the shortage of funds.

Articles 20 and 21. The Committee notes the Government's indication that the necessary measures will be taken to prepare an inspection report in order to comply, in future, with the provisions of the Convention. The Committee would like to recall, as it did in its previous comments, that these reports must be published within the time limit set by Article 20, and address all the points listed in Article 21(a) to (g). It draws the Government's attention to the explanations in paragraphs 277 and 281 of its 1985 General Survey on labour inspection, regarding the form, method of publication and content of these reports. It trusts that the Government will take the necessary measures in this respect in the near future.

Sudan (ratification: 1970)

Further to its previous comments, the Committee notes once again that, while the Government's report describes in general terms the manner in which the Convention is applied, it contains no information on any new measures taken in respect of the matters raised. It recalls once again its suggestion that the Government concentrate its attention on the results of the technical cooperation received and on any new measures that would be desirable to take as a consequence. The Committee hopes that the Government will do its utmost to furnish precise information concerning the activities in practice of the labour inspection system. The Committee refers to certain other questions in a direct request.

Turkey (ratification: 1951)

The Committee notes the information provided by the Government in its report for the period ending June 1995. It also notes the observations by the Turkish Confederation of Employer Associations (TISK) and by the Confederation of Trade Unions of Turkey (TURK-IS).

1. *Articles 10 and 16 of the Convention.* In its observations TURK-IS alleges that the number of inspectors is not sufficient to secure the effective discharge of the duties of the inspectorate and to inspect workplaces as regularly and efficiently as required by the Convention with the effect that clandestine and black employment is widespread and

was estimated in 1994 to 4 million workers, among which were children below the minimum age for admission to employment. Referring more specifically to inspection by the Social Security Association (SSA), TURK-IS states that the 415 inspectors of the SSA have to carry out all kinds of inspections called for by the SSA and the 610,000 workplaces which register their workers, and that for this reason a large proportion of inspections concerning illegal workers are carried out following a complaint. The trade union considers that the number of Ministry of Labour and Social Security labour inspectors and the power invested in them is far from adequate to allow labour inspection to be carried out in the manner foreseen in the Convention.

The Committee notes that for its part TISK is of the opinion that complete harmony with the Convention has been reached; adequate mechanisms have been set up in order to inspect the conditions of work in workplaces and the protection of workers, and a large number of men and women inspectors have been appointed for that purpose.

The Committee hopes that the Government will provide its comments on the allegations made by TURK-IS and information on the measures taken or envisaged to ensure that the number of inspectors is sufficient to secure the effective discharge of the duties of the inspectorate and to ensure that workplaces are inspected as often and thoroughly as is necessary.

2. *Article 3, paragraph 1(a).* The Committee notes from the 1993 annual labour inspection report that an extensive inspection programme was carried out in the ship-breaking yards in the Aliaga region. According to the report, the regulations governing activities in the yards are not respected, and workers' health and security are jeopardized during the dismantling process by hazards such as fires, explosions, asbestos dust. The Committee notes that the inspections were due to continue in 1994 and that solutions to problems were sought through a revision of the regulations. The Committee hopes that the Government will provide information on the results achieved through the inspection, the revision of the regulations as well as on measures taken to ensure the application of the relevant provisions.

Uruguay (ratification: 1973)

1. The Committee notes that the Governing Body, at its 267th Session (November 1996), adopted the report of the committee set up to examine the representation presented under article 24 of the Constitution by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and its affiliate, the National Single Trade Union in Construction and Similar Activities (SUNCA), alleging non-observance by Uruguay of the Safety Provisions (Building) Convention, 1937 (No. 62), the Labour Inspection Convention, 1947 (No. 81), the Labour Administration Convention, 1978 (No. 150) and the Occupational Safety and Health Convention, 1981 (No. 155) and the Occupational Health Services Convention, 1985 (No. 161).

In their representation, the complainant organizations claimed that private enterprises in the construction sector, which employs the largest proportion of manpower in the country, were reducing to a minimum their prevention costs relating to safety and health. The result, according to the complainants, was a major renewed outbreak of infringements of the current legislation on safety and health. The organizations concluded that this situation had arisen because of the non-existence of an efficient labour administration, capable of assuming its responsibilities in the fields of industrial accidents and occupational diseases, in particular concerning employers' respect for legislative provisions. They also considered that the labour inspection service did not have sufficient human and material resources necessary to carry out its tasks.

The conclusions of the report show that, while it is a fact that the national legislation gives effect to the Conventions, and that the Government had made efforts to improve the system of inspection and accident prevention in the construction sector, the high number of industrial accidents in this sector including a number of mortal accidents, following non-observance of the national legislation, leads to the conclusion that, in practice, the application of Convention Nos. 62, 81, 150 and 155 is not ensured. In accordance with the recommendations in the report, the Government is asked to take the measures necessary to: guarantee that the legislation on occupational safety and health in the construction sector is applied to all the workers employed in this sector; to ensure observance of the standards in force regarding safety and health by all the enterprises in the sector, with particular attention being given to subcontractors; check that temporary workers receive the training necessary for them to carry out their tasks; strengthen the labour inspection system and the other administration bodies responsible for verifying observance of the safety and health standards; and guarantee that all complaints received are systematically and diligently investigated and followed up by the penalties set out in the national legislation when infringements of the safety standards are detected.

The Committee asks the Government to supply information on the measures taken to give effect to the recommendations so as to ensure the application of the Convention.

2. Referring to its previous comments, the Committee hopes that the Government will publish and send to the Office an annual inspection report including information on the number of workplaces liable to inspection and statistics on industrial accidents and occupational diseases *(Articles 20 and 21 (c), (f) and (g))*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, Comoros, Djibouti, Grenada, Guinea, India, Mauritania, Morocco, Peru, Romania, Solomon Islands, Spain, Sudan, Turkey.*

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Albania (ratification: 1957)

The Committee notes the information supplied by the Government. It notes with satisfaction that the Constitution, as amended up to 1993, and the Labour Code of 12 July 1995 have introduced the possibility of trade union pluralism.

The Committee is sending a request for clarification on certain points directly to the Government.

Argentina (ratification: 1960)

The Committee recalls that its previous comments referred to the following points:

> In its previous observation, the Committee noted that a draft text to amend Act No. 23551 had been prepared with the participation of an ILO advisory mission, providing for the repeal or amendment of the following provisions which were contrary to the Convention: section 30 (which required excessive conditions for granting trade union status to unions representing workshops, occupations or categories of workers); section 28 (which, in order to contest the trade union status of an association, required the petitioning association to have a "considerably higher" number of members); section 38 (which permitted only associations enjoying trade union status, and not associations which were merely registered, to be retained

for the purposes of trade union quotas); and section 39 (which exempted only associations with legal personality, and not associations which were merely registered, from taxation).

In addition, the Committee noted that the above draft text had not provided for the modification of the following provisions (recommended by the Committee of Experts for several years now): the excessive conditions set out in law for an enterprise union to obtain trade union status (section 29 of the Act, which provides that "a trade union at the enterprise level may be granted trade union status only when another first-level trade union and/or a union does not already operate within the geographical area or the area of activity or category covered"), nor the provisions which grant privileges to associations which have been granted trade union status in comparison with other associations as regards the representation of collective interests other than through collective bargaining (section 31(a) of the Act, which provides that "associations which have been granted trade union status have the exclusive right to defend and represent the individual and collective interests of workers") and as regards trade union protection (sections 48 and 52 of the Act, which provide that only the representatives of associations which have been granted trade union status enjoy special protection).

While noting that, in its previous report, the Government stated that the draft text to amend Act No. 23551 was passed by the Chamber of Senators in November 1992 and was before the Chamber of Deputies for study by the relevant committee, the Committee regretted that after an extremely long period of time the Act in question had not been adopted.

The Committee expressed once again the strong hope that the amending text would be approved as soon as possible with the aim of avoiding any possibility of partiality or abuse in the determination and consequences of greater representativity of trade union organizations. The Committee requested the Government to inform it on this matter in its next report.

The Committee is also addressing a request directly to the Government on various matters raised by two trade union organizations.

While it was sitting, the Committee received the Government's report which it will examine at its next meeting.

Australia (ratification: 1973)

The Committee notes the information supplied by the Government in its report.

1. (a) *Federal legislation. Section 45(D) of the Trade Practices Act.* In its previous comments, the Committee had noted that the Industrial Relations Reform Act of 1993 (hereinafter the "Reform Act") had amended the Trade Practices Act to confine the operation of section 45(D) to non-industrial secondary boycotts which had the purpose and effect of causing a lessening of competition in a market. The Committee had further noted that the Reform Act, while not prohibiting secondary boycotts, limited them in certain situations. The Committee now notes from the Government's report that the Workplace Relations and other Legislation Amendment Bill, 1996, which is currently before the Federal Parliament, contains extensive amendments of the current secondary boycott provisions. The Committee takes note of this information. It requests the Government to provide a copy of the Workplace Relations and other Legislation Amendment Bill, 1996 as soon as it has been adopted, and to supply, in its next report, information on the practical application of the new secondary boycott provisions, including any eventual court decision handed down in this regard.

(b) *State legislation. New South Wales (NSW) Industrial Relations Act, 1991 and sections 4, 17 and 18 of the NSW Essential Services Act, 1988.* In its previous comments, the Committee had requested the Government to indicate any new developments with respect to the ban on secondary boycotts and the definition of essential services in New South Wales. The Government states in its report that, as regards the secondary boycott provisions contained in the Industrial Relations Act, 1991 (NSW), which were based on sections 45(D) and 45(E) of the Federal Trade Practices Act, 1974, the Industrial Relations Act, 1991, (NSW) has now been repealed. The said provisions do not form part of the replacing Industrial Relations Act, 1996 (NSW). The Committee takes note of this information.

2. *Essential services legislation.* (a) *Federal legislation.* In its previous comments, the Committee had requested the Government to keep it informed of any progress made in repealing sections 30(J) and 30(K) of the Crimes Act, 1914. The Committee had, in effect, noted that section 30(J) banned strikes in services where the Governor-General had proclaimed the existence of a serious industrial dispute "prejudicing or threatening trade or commerce with other countries or among the states", and that section 30(K) prohibited boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade. The Government states that as it took office following the federal election on 30 March 1996, it has yet to determine its attitude to the possible repeal of these provisions. The Committee would draw the Government's attention to the fact that the previous Government had indicated that section 30(J) had not been invoked since 1951 and that there had been no prosecutions under section 30(K) for many years. Consequently, the Committee would request the Government to give serious consideration to the repeal of both these provisions so as to bring its legislation into conformity with the Convention and national practice.

(b) *State legislation.* The Committee had further requested the Government to indicate the number and types of occasions where the restrictions on strikes provided for under the Conspiracy and Protection of Property Act, 1878 (hereinafter the Conspiracy Act), and the Criminal Law Consolidation Act, 1935-75 (hereinafter the Consolidation Act), had been used in the States of South Australia and Tasmania respectively.

The Government states in its report that no restrictions on strikes provided for under the Conspiracy Act or the Consolidation Act have been used during the reporting period. The Government then explains that the Conspiracy Act, 1878, came into operation on 30 November 1879 and reflected provisions of the British Conspiracy and Protection of Property Act, 1875, which were adopted at that time by all Australian states and territories. The Conspiracy Act was subsequently repealed in 1935 and the relevant provisions consolidated into the Consolidation Act in sections 260-266. These provisions proscribed certain trade union activity which could lead to breach of the peace including violence, intimidation, picketing etc., and were considered at that time to be a significant step toward the freedom afforded to trade union activity. The Consolidation Act was subsequently amended by Bill No. 35 of 1992 which removed sections 260-266 and substituted a new section 258 which came into operation on 6 July 1992. The new section 258 provides that an act in contemplation or furtherance of an industrial dispute as defined under the State's industrial laws is not punishable under the Consolidation Act unless it is an indictable offence. The Committee takes note of this information with satisfaction.

Referring to the Committee's previous comments, the Government indicates in its report that section 26 of the South Australian Criminal Law Consolidation Act 1935-75, and the Tasmanian Conspiracy and Protection of Property Act, 1889, have been repealed by Act No. 59 of 1994, and the Statute Law Revision Act, 1991, respectively. The Committee takes note of this information with satisfaction.

The Government of the State of Victoria indicates that there is no outright ban on strikes in essential services or vital industries in Victoria. The Essential Services Act, 1958, the Vital State Industries (Works and Services) Act, 1992, and the Public Safety

Preservations Act, 1958, as their names imply, cover situations that relate to vital industries and essential services. But all these Acts provide safeguards to the exercise of power by requiring the Governor-in-Council to invoke the powers of these Acts when it appears to him/her that a state of emergency has arisen. The first two Acts in particular limit the life span of any declaration or proclamation made under these Acts, and authorize Parliament to repeal such declaration or proclamation. Moreover, none of the above-mentioned essential services legislation was invoked during the reporting period. The Committee takes note of this information.

Finally, the Committee takes note of an Australian High Court decision handed down on 4 September 1996. The Committee notes that the decision follows proceedings brought against the Commonwealth Government of Australia by the States of Victoria, South Australia and Western Australia seeking declarations that certain provisions of the Industrial Relations Act, 1988, were invalid. The provisions of the Act which were challenged were, amongst others, those that provide for collective bargaining and the right to strike. The Committee notes with interest that the decision largely upheld these provisions, on the basis that the Commonwealth Government had the power to legislate on these matters under section 51 of the Australian Constitution concerning the "external affairs" power of the Commonwealth Government.

Austria (ratification: 1960)

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. With reference to its previous comments concerning the need to amend the legislation in order to enable foreign workers to be eligible for election to works councils, the Committee notes the Government's statement in its latest report that, although the extension of eligibility in this respect has been repeatedly demanded by workers in recent times, it has not yet been possible to accede to this demand.

The Committee must, therefore, once again express the hope that the restrictions placed upon foreigners who are not nationals of the European Economic Area (EEA) will be lifted in the very near future, at least as concerns a proportion of the representatives on the works councils. The Committee recalls in this respect that foreigners may, however, be required to meet a reasonable residency requirement before being eligible for such positions. The Government is requested to indicate any measures taken or envisaged in this regard in its next report.

Azerbaijan (ratification: 1992)

The Committee notes the information supplied by the Government in its report.

In its previous comments, the Committee observed that certain provisions of the legislation then applicable contained important restrictions on the right of workers to participate in collective action, combined with severe sanctions. It notes the Government's indication to the effect that the Penal Code in force, section 188-3, governs participation in collective activities creating a public disturbance. The Committee notes that this provision contains important restrictions on the right of workers to participate in collective action aimed at disturbing transport operations, state or public institutions or undertakings, combined with severe sanctions, including sentences of imprisonment for up to three years. The Committee recalls its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. It considers that restrictions or prohibitions on the right to strike should be restricted to public servants exercising authority in the name of the State or in essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. It requests the Government to amend or repeal this provision where it could apply to strikes in public transport or state or public institutions or undertakings which are not essential services within the strict meaning of the term.

The Committee is raising a number of other points in a request addressed directly to the Government.

Bangladesh (ratification: 1972)

The Committee notes the information provided by the Government in its report, as well as the oral information supplied by the Government to the Conference Committee in June 1995 and the detailed discussion which took place thereafter. The Committee recalls that its previous comments concerned the following points:

- the right of association of persons carrying out managerial and administrative functions;
- the right of association of public servants;
- restrictions on the range of persons who can hold office in trade unions;
- the extent of external supervision of the internal affairs of trade unions;
- the "30 per cent" requirement for initial or continued registration as a trade union,
- denial of the right to organize of workers in export processing zones; and
- restrictions on the right to strike.

Managerial and administrative functions

In its previous observation, the Committee had noted the Government's statement that, while persons carrying out managerial or administrative functions were excluded from the definition of "worker" in the Industrial Relations Ordinance, 1969 (IRO), and thus denied the right of association set out in section 3(a) of the IRO, such persons could form associations in order to further their professional interests. The Committee had requested the Government to indicate which legislative provisions granted the right of association to persons carrying out managerial and administrative functions, and to provide information on the number and size of such associations.

The Government states in its report that the Bangladesh Civil Service Administration Association has about 6,000 members and the Bangladesh Civil Service Economic Association about 600 members, while other such associations exist for difference cadres and non-cadres.

The Committee notes, however, that the Government still does not indicate which legislative provisions grant the right of association to persons carrying out managerial and administrative functions in the *private sector* and requests it to do so in its next report. The Committee notes moreover that apart from providing some information on the two main associations, the Government confines itself to stating that "other such associations exist for different cadres and non-cadres". The Committee would once again request the Government to provide specific information in its next report on the number and size of "other such associations".

Right of association of public servants

The Committee notes the Government's reiteration that its legislation is in conformity with the requirements of the Convention with respect to public servants. In its previous comments, the Committee had noted the Government's statements that public servants, while not covered by the IRO, do have the right to form associations to advance their causes. The Committee had recalled, however, that such associations were subject to certain restrictions relating to their activities (in particular, as regards their rights to issue publications) by virtue of the Government Servants (Conduct) Rules, 1979, which were not in conformity with *Articles 2 and 3 of the Convention.* The Committee recalls that measures which impose prior restraint on the subject matter of trade union publications are contrary to the right of workers' organizations to organize their administration and activities and to formulate their programmes without interference from public authorities. The Committee requests the Government to indicate the measures taken or envisaged to bring these rules into conformity with the requirements of the Convention.

Furthermore, the Committee notes that the draft Labour Code would appear to continue to exclude workers at the Security Printing Press and public servants. The Committee expresses the firm hope that the necessary measures will be taken in the near future to ensure that all workers, without distinction whatsoever, are guaranteed the right to organize and requests the Government to indicate the progress made in this regard.

Restrictions on the range of persons who can hold office in trade unions

In its previous comments, the Committee had noted that section 7-A(1)(b) of the IRO prevented persons who were not current or former employees of an establishment or group of establishments from becoming members or officers of a trade union in such an establishment or group of establishments. Furthermore, with reference to section 3 of Act. No. 22 of 1990 amending the IRO which provides that a worker dismissed for misconduct shall not be entitled to become an officer of a trade union, the Committee had considered that the provisions were contrary to the right of workers' organizations to elect their representatives in full freedom.

According to the statement made by the Government representative to the Conference Committee, the admission of workers dismissed for misconduct, either as union members or officers, would hinder normal union activities as well as industrial peace and productivity. In the Government's view, section 7-A(1)(b) of the IRO promoted rather than restricted the right of workers to choose their representatives.

The Committee points out to the Government, however, that such legislation entails the risk of interference by the employer through the dismissal of trade union members or leaders for exercising legitimate trade union activities with the result (or even the intention) of depriving them in the future from holding a position as a trade union officer. The Committee therefore once again expresses the firm hope that the Government will ensure that these provisions are amended to provide for greater flexibility in relation to membership and the holding of trade union office by admitting as candidates persons who have previously been employed in the occupation (including workers who have been dismissed) or by exempting from occupational requirements a reasonable proportion of the officers of an organization.

External supervision

In its previous comments, the Committee had noted that the powers of the Registrar of Trade Unions to enter trade union premises, inspect documents, etc. under Rule 10 of the Industrial Relations Rules, 1977, were not subject to judicial review. The Committee had drawn the Government's attention in this regard to paragraph 125 of its General Survey on freedom of association and collective bargaining in which it had considered that there was no infringement of the right of organizations to organize their administration if the supervision by the public authorities of the organization's financial situation was limited to the obligation to submit periodic financial reports or if there were serious grounds for believing that the actions of an organization were contrary to its rules or the law. In any event, the Committee had concluded that the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity.

The Government states in its report that any action of the Registrar can be challenged in a court of law.

The Committee requests the Government to indicate, in its next report, the legislative provisions that limit the Registrar's powers of supervision to verifying that the law and the organization's rules are respected. It further requests the Government to indicate the provisions that subject such powers of supervision to judicial review.

The 30 per cent requirement

For several years now, the Committee has been asking the Government to review sections 7(2) and 10(1)(g) of the IRO in order to bring them into conformity with *Article 2 of the Convention*. The first of these provisions is to the effect that no trade union may be registered unless it has a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments in which it is formed. The second gives the Registrar of Trade Unions the power to cancel the registration of a union where its membership has fallen below the 30 per cent threshold.

The Government states once again that this requirement helps check the multiplicity of trade unions in Bangladesh which would adversely affect workers' interests. In any event, in an establishment meeting this requirement, up to three unions could be registered. Moreover, there were provisions for determining a collective bargaining agent. It adds, however, that the recommendation of the National Labour Laws Commission (NLLC) in this regard is being considered by the Government.

The Committee, considering that these provisions restrict the right of all workers to organize, hopes that the necessary measures will be taken in the near future to ensure full conformity with Article 2 of the Convention and requests the Government to keep it informed of any progress made in this regard.

Denial of the right to organize in export processing zones

In its previous comments, the Committee had noted that amendments proposing the extension of the provisions of the IRO and other related laws to workers in export processing zones (EPZs) had not yet been adopted although some workers in these zones seemed to have been allowed to form trade unions in anticipation of these amendments.

The Committee notes from the Government's report that the NLLC has submitted a report on this issue which is being studied by the Government. This report would eventually be submitted as a Bill to Parliament. The Committee expresses the firm hope that the NLLC report recommends the complete extension of the provisions of the IRO and other related laws to workers in EPZs. It requests the Government to provide detailed information in this respect in its next report.

Restrictions on the right to strike

In its previous comments, the Committee had recalled the concerns which it had been raising over a number of years with respect to several provisions in the IRO which limited strikes and other forms of industrial action in a manner which was not in conformity with the principles of freedom of association. In particular: (i) the necessity for three-quarters of the members of a workers' organization to consent to a strike (section 28); (ii) the possibility of prohibiting strikes which last more than 30 days (section 32(2)) and of prohibiting a strike at any time if it is considered prejudicial to the national interest (section 32(4)) or involve a "public utility service" (section 33(1)); and (iii) the nature of the penalties which may be imposed in respect of participation in unlawful industrial action (sections 57, 58 and 59), including the possibility of imprisonment.

The Committee nevertheless had indicated that it was mindful of the difficulties which might arise during acute national crises. It had recalled that it had always recognized that in such cases the right to strike could be circumscribed for a limited period of time. Furthermore, strike action could be restricted or prohibited in relation to public servants exercising authority in the name of the State or for workers in essential services in the strict sense of the term, that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in the case of an acute national crisis. The Committee had considered, however, that the above-mentioned restrictions on strikes and other related actions in the IRO went beyond the above situations and categories of workers.

The Government states in its report that it has taken note of the Committee's comments in relation to this issue. The Committee expresses the firm hope that the Government will take the necessary steps in the near future to amend these provisions in order to bring them into full conformity with the Convention. It requests the Government to keep it informed of developments in this regard.

The Committee had noted previously that the tripartite National Labour Law Commission (NLLC) had undertaken a review of labour legislation and that a new Labour Code had been drafted. The Committee trusts that this draft Labour Code will fully take into account the Committee's comments on all of the points raised above. In this respect, it reminds the Government that the technical assistance of the International Labour Office is at its disposal if it so wishes.

Barbados (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments concerning section 4 of the Better Security Act of 1920 (Chapter 160) under which any person who wilfully breaks a contract of service or employment, knowing that he or she may thus endanger real or personal property, is liable to imprisonment or a fine, the Committee had noted the Government's statement to the effect that this provision had not been invoked for many years and that it was unlikely that its sanctions would be applied, since it was outdated.
>
> The Committee once again recalls that if this provision is applicable in the event of a strike, it should be amended in order to limit the scope of restrictions which are enforceable with penalties to essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of whole or part of the population and that sanctions should not be disproportionate to the seriousness of violations (see General Survey on freedom of association and collective bargaining, 1994, paragraph 178).
>
> In its latest report, the Government indicated that the Better Security Act had not yet been amended. As the Government had indicated its intention to amend the Act since 1984, the Committee asks the Government to indicate, in its next report, the measures taken or envisaged to bring the provision in question into conformity with the principles of freedom of association.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Belarus (ratification: 1956)

The Committee notes the information contained in the Government's report.

The Committee notes with concern the conclusions of the Committee on Freedom of Association in Case No. 1849 relating to serious complaints of violations of freedom of association in law and in practice (see 302nd Report of the Committee on Freedom of Association approved by the Governing Body at its Session of March 1996).

The Committee notes in particular that these complaints concern the suspension by administrative decision of trade unions following a transport strike. The Committee stresses that under *Article 4 of the Convention*, workers' and employers' organizations may not be dissolved or suspended by administrative decision. It therefore urges the Government to refrain from resorting to such measures.

In addition, the Committee asks the Government, as did the Committee on Freedom of Association, to reestablish freedom of association in law and in practice. It asks the Government in particular to amend Order No. 158 adopted on 28 March 1995 by the Cabinet of Ministers to remove the transport sector from the list of essential services in which strikes are banned (pursuant to section 16 of the Act of 18 January 1994 on the settlement of collective disputes). In this connection, the Committee has expressed the opinion that to ban strikes by workers other than public servants exercising authority in the name of the State, or in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, health or safety of the whole or part of the population, seriously restricts the means of action available to trade unions.

The Committee urges the Government to amend its legislation so that transport workers' organizations unequivocally enjoy the right to strike in order to defend the economic, social and professional interests of their members since, in the Committee's view, the transport service *as such* cannot be regarded as an essential service in which strikes are banned. However, a negotiated minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear, could be envisaged provided that the workers' organization concerned may participate if it so wishes, in defining such a service, along with employers and the public authorities (see paragraph 161 of the 1994 General Survey on freedom of association and collective bargaining).

The Committee asks the Government to indicate in its next report the measures taken in this respect to bring its legislation into conformity with the requirements of the Convention, and to keep it informed of progress made.

Furthermore, the Committee emphasizes that ILO technical assistance is at the Government's disposal in order to allow it to draw up legislation that is in full conformity with the requirements of the Convention. It asks the Government to send a copy of the Labour Code as soon as it is adopted, so that it may check its conformity with the Convention.

Belgium (ratification: 1951)

The Committee notes the detailed information supplied by the Government concerning the results of the elections held in 1995 from which it appears particularly that the Confederation of Christian Trade Unions (CSC), the General Confederation of Free Trade Unions of Belgium (CGSLB) and the Belgian General Federation of Labour (FGTB) comply with the conditions fixed by the law to be recognized as representative workers' organizations.

Recalling that its comments for many years have related to the need to take measures to ensure by law that objective, predetermined and detailed criteria are adopted in establishing rules for the access of workers' and employers' occupational organizations to the National Labour Council and that in this regard the Act of 29 May 1952 establishing the National Labour Council still contains no specific criteria on representativity but leaves wide powers of discretion to the Government, the Committee expresses the firm hope that the Government will adopt legislation, in the near future, setting out such criteria. It requests the Government to indicate in its next report any progress made in this respect.

In addition, the Committee is sending the Government a direct request.

Bolivia (ratification: 1965)

The Committee notes that it has not received the Government's report. The Committee notes the information supplied by a Government representative and the discussions held in the Conference Committee in 1995, as well as the conclusions and recommendations of the Committee on Freedom of Association (see the 300th Report, paragraphs 392-398, approved by the Governing Body at its 264th Session in November 1995).

The Committee recalls that, for many years, its comments have referred to:

- the denial of the right to unionize to public servants (section 104 of the General Labour Act of 1939);
- the impossibility of setting up more than one union in an enterprise (section 103 of the above Act);
- the wide powers of supervision of the labour inspectorate over the activities of trade unions (section 101 of the Act);
- the prohibition from holding trade union office placed upon persons who do not normally work in the enterprises and are not included in wage and salary lists (section 6(c) of the Legislative Decree of 1951);
- the termination of the mandate of trade union leaders when they retire from their job (section 7 of the above Legislative Decree);
- the requirement that members of the executive board have to be of Bolivian nationality (section 138 of the Decree issued under the General Labour Act);
- the possibility of dissolving trade unions by administrative authority (section 129 of the Decree);
- the requirement (of three-quarters of the employees who are in service) to call a strike (section 114 of the Act and section 159 of the Decree issued thereunder);
- the prohibition of strikes in all public services (section 118 of the Act), including banks and public markets (section 1(c) and (d) of Supreme Decree No. 1958 of 1950);
- the recourse to compulsory arbitration as a means of ending a strike (section 113(c) of the Act);
- the prohibition of general and solidarity strikes under penalty of six months' detention and six months' internal exile, with a doubling of these sentences in the event of a repetition of the offence (sections 1 and 2 of Legislative Decree No. 02565 of 1951).

The Committee of Experts, like the Committee on Freedom of Association, profoundly regrets the massive numbers of sentences of imprisonment and internal exile imposed upon trade unionists, as well as the various anti-trade union acts that have been committed in recent years against numerous trade union leaders (see the 300th Report, paragraph 398). In this respect the Committee urges the Government to take the necessary measures to guarantee respect of basic human rights and the full exercise of trade union rights.

With regard to the numerous comments that it has been making for several years, the Committee regrets to note that, despite the fact that these comments were the subject of long discussions in the Conference Committee in 1993 and 1995, and that the Government representative had given assurances that the draft legislation currently being prepared with the technical assistance of the ILO would be adopted in the near future, no progress has yet been made in the application of the Convention.

The Committee once again requests the Government to take the necessary measures as soon as possible to examine all of the matters raised in its comments with a view to modifying its legislation, with the assistance of the ILO if it so wishes, and bringing it into full conformity with the provisions of the Convention. The Committee hopes that it will soon be able to note concrete progress in this respect.

Furthermore, the Committee is addressing a request directly to the Government.

[The Government is asked to supply full particulars to the 85th Session of the Conference and to report in detail in 1997.]

Burkina Faso (ratification: 1960)

The Committee recalls that its previous comments concerned the need to repeal the provisions requiring public servants to respect the revolutionary order under penalty of disciplinary sanctions set out in Zatu No. AN VI-008/FP/TRAV of 26 October 1988 establishing the general conditions of service of the public service (sections 6, 7, 9, 36 and 46). The Committee notes the Government's statement that it will take those observations into consideration, and again asks the Government to take the necessary steps to bring its legislation into conformity with the requirements of the Convention in this respect and to keep it informed on the matter.

Cameroon (ratification: 1960)

The Committee notes that the Government's report has not been received.

It nevertheless takes note of the statements made by the Government representative to the Conference Committee in June 1996 and the discussion which ensued.

1. *Article 2 of the Convention.* The Committee recalls that for many years it has pointed out that Act No. 68/LF/19 of 18 November 1968, which subjects the legal existence of a trade union or occupational association of public servants to the prior approval of the Minister of Territorial Administration, and section 6(2) of the Labour Code of 1992, under which persons forming a trade union that has not yet been registered, and who act as if the said union has been registered, shall be liable to prosecution, are not consistent with the requirements of the Convention.

In regard to Act No. 68/LF/19 of 18 November 1968, the Government indicates that the law in question is being repealed and that a Bill has been conveyed to the Prime Minister for presentation to the National Assembly. It adds that the Minister of Territorial Administration has granted approval to several trade unions in the public sector, including the National Union of Technical Services Officials (SYNAFCIF), the National Union of Technical Services Staff (SYNAPTECH) and the National Union of Teachers of Cameroon (SYNEC). The Government states that these approvals are evidence of its will to move towards abolishing prior authorization. The Government indicates, furthermore, that the National Union of Teachers in Higher Education (SYNES) conducts its affairs in full freedom but refuses to comply with legal registration requirements.

In regard to section 6(2) of the Labour Code of 1992, the Government repeats its previous declarations that the matter was a mere administrative formality which existed for all civil acts and allowed the legal existence of the trade union to be noted. The Committee repeats that it is difficult to imagine this registration as a mere formality since the SYNES has had its application refused.

The Committee notes in fact, on the one hand, that the Committee on Freedom of Association has expressed its concern at the Government's refusal since 1991 to recognize the SYNES and considers that Act No. 68/LF/19 of 18 November 1968 and section 6(2) of the Labour Code are contrary to the provisions of the Convention and, on the other hand, that in June 1994 and June 1996 the Conference Committee reminded the Government of the need to amend in the near future its law and practice to ensure application of the Convention. The Committee is therefore obliged to urge the Government once again to recognize the right of teachers in higher education, be they public servants or contract employees, to form unions of their own choosing, and to take the necessary steps to repeal Act No. 68/LF/19 of 18 November 1968, and section 6(2) of the Labour Code, so as to guarantee the right of all workers, including public servants, to establish professional associations *without previous authorization*, in accordance with this Article of the Convention.

2. *Article 5*. In regard to section 19 of Decree No. 69/DF/7 of 6 January 1969, under which trade unions or professional associations of public servants may not join a foreign professional organization without obtaining prior authorization from the Minister responsible for "supervising fundamental freedoms", the Government indicates that since this Decree is issued under the Act of 1968, it will be brought into conformity with the Convention once the new Act on civil servants' unions is promulgated. Recalling that Article 5 of the Convention gives all occupational organizations the right to affiliate freely with international workers' and employers' organizations, the Committee requests the Government to take the necessary measures, as soon as possible, to abolish prior authorization in order to bring the legislation into conformity with the provisions of the Convention. The Committee would remind the Government that ILO technical assistance is available for the elaboration of a draft law concerning trade unions or occupational associations of public servants to be fully in conformity with the requirements of the Convention.

The Committee hopes that the Government will endeavour to take the necessary action in the very near future.

Canada (ratification: 1972)

1. The Committee notes the Government's report and the conclusions of the Committee on Freedom of Association in the various cases concerning Canada.

2. *Articles 2 and 3 of the Convention: the right of workers and employers to establish and join organizations of their own choosing and to formulate their programmes without previous authorization.*

Alberta

The Committee recalls that for many years its comments have concerned the provisions of the *Public Service Employee Relations Act* and the *Labour Relations Act* which ban strikes by a broad range of provincial public servants and therefore go beyond the acceptable limits on the right to strike recognized implicitly in *Article 3 of the*

Convention (particularly section 117.1 of the *Public Service Employee Relations Act* as amended in 1983 by Act No. 44 which bans strikes by all hospital workers including kitchen staff, porters, gardeners). The Committee recalls that prohibition of the right to strike should be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term. The Committee emphasizes once again that limitations on strike action in the public service or essential services should be compensated by adequate, impartial and speedy conciliation and arbitration procedures. Accordingly, it again emphasizes the need for the above laws to be revised to bring them into full conformity with the provisions of the Convention and urges the Government to provide information on any measures taken in this connection, particularly on the outcome of the review of this legislation announced in the previous report, and on the updating of its provisions.

Newfoundland

The Committee recalls that its previous comments concerned the need to amend the *Public Service (Collective Bargaining Act) (No. 59)*, which, by its definition of "employee" deprives many workers of the possibility of joining the union of their choice and restricts the right to strike in the public service, since section 10.1 of the Act, which relates to the procedure for the designation of "essential employees" confers broad powers on the employer on this respect. The Committee notes from the Government's report that, following a public consultative process by a joint labour-employer working group, draft labour legislation is being prepared. The mandate of the group includes a review of legislation affecting freedom of association and the right to organize in order to propose appropriate reforms. The Committee asks the Government to keep it informed of developments in this respect. Furthermore, the Committee notes with interest that, with respect to the designation of "essential employees" under section 10.1 of Act No. 59, significant agreement has been reached by the parties concerned in the health sector on the numbers and positions to be declared essential. Moreover, one case has been brought before the Labour Relations Board which, after two years of hearings, has ruled that "essential" refers to the health, safety and security of the public in accordance with the principles of freedom of association. The Committee asks the Government to keep it informed of any developments with regard to the designation of essential services under *Act No. 59*.

3. As regards the prohibition of strikes in general, the Committee notes from the Government's detailed report that there has been some progress in non-essential sectors (construction, Quebec), but must again express concern about the agricultural and horticultural sectors (Ontario) and the railway and port sectors (federal Government). The Committee requests the Government to ensure that restrictions on the right to strike are limited to essential services in the strict sense of the term, to public servants exercising authority in the name of the State or to cases of acute national crisis, in accordance with the principles of freedom of association.

In addition, a request regarding certain points is being addressed directly to the Government.

Central African Republic (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that its previous comments related to sections 1, 2 and 4 of Act No. 88/009 of 19 May 1988 (the requirement that a person who stands for trade union office has to be an employee in the same occupation, and the establishment of the single trade union

system in the legislation) which are not fully in accordance with the requirements of the Convention, and to the restitution of the property of the former General Union of Central African Workers (UGTC).

The Committee notes with interest that the new Constitution of 14 January 1995 enshrines trade union pluralism and freedom of association. The Government indicates that laws will be enacted to give effect to these constitutional provisions.

In regard to the procedure for the reimbursement of the property of the former UGTC which became the Trade Union Federation of Central African Workers (USTC), the Committee notes the exchange of letters between the Government and the USTC Secretary-General dated 24 May and 1 June 1995 in which the Government requests an exact inventory of the property concerned with a view to seeking ways and means of solving the problem with the government authorities. The Government indicates in its report that the financial and economic difficulties to which the State is subject have not allowed the Government to compensate for the damages suffered by the former UGTC.

The Committee requests the Government to keep it informed in its next report of any change in the situation in either legislation or practice and, in particular, to indicate the measures taken to amend sections 1, 2 and 4 of the 1988 Act in order to bring them into conformity with the requirements of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chad (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

In its previous comments, the Committee had asked the Government specifically to repeal several texts and to amend others;

- Ordinance No. 30 of 26 November 1975 suspending all strike action;
- Ordinance No. 001/CSM of 8 January 1976 prohibiting public employees and assimilated workers from exercising the right to organize;
- section 36(2) of the Labour Code banning all political activity by unions;
- Ordinance No. 27 INT/SUR of 28 July 1962 regulating associations, which the Government used to obstruct the formation of a union; and
- section 41(a) of the Labour Code subjecting eligibility to trade union office to seven years' residence in Chad.

The Committee notes with satisfaction the contents of the Constitution adopted by referendum on 31 March 1996, which establishes freedom of association and the right to strike and provides expressly that unions may be dissolved only by judicial procedure (sections 28, 29 and 30).

The Committee also notes the Government's assurances in its report that it has just adopted a new Labour Code and will be submitting it to Parliament for final adoption.

In particular, the Committee notes with interest that, according to the Government, Ordinances Nos. 30 and 001/CSM of 1975 and 1976 are expressly repealed by section 508 of the new Code, that section 36(2) of the 1966 Labour Code banning all political activity by trade unions is abolished by section 297 of the new Code and that section 300 of the new Code reduces the length of residence in Chad required for foreigners to participate in the administration or management of a union to five years.

The Committee also notes with interest that a draft amendment to Ordinance No. 27 INT/SUR of 28 July 1962 on associations, to the effect that it does not apply to trade union organizations has been submitted to the Ministry of the Interior and Security.

The Committee asks the Government to provide information on progress made in its next report and to send in the near future all the above texts, which align the legislation more closely with the Convention.

Colombia (ratification: 1976)

The Committee notes the Government's report. The Committee notes the report of the freedom of association mission undertaken from 7 to 11 October 1996 in Colombia, as requested by the Government in the Conference Committee in June 1996.

The Committee recalls that its previous comments concerned:

- the requirement that, in order for a trade union to be registered, the labour inspector must certify that there is no other union (section 365(g) of the Substantive Labour Code);
- the requirement that, in order to form a union, two-thirds of its members must be Colombian (section 384 of the Code);
- the supervision of the internal management and meetings of unions by public servants (section 486 of the Code);
- the presence of the authorities at general assemblies convened to vote on referral to arbitration, or on the calling of a strike (new section 444, last subsection, of the Code);
- the requirements for eligibility for trade union office (sections 388(1)(a) and (c), 422(1)(a) and (c) and 432(2) of the Code): a person must be Colombian, belong to the trade or occupation and have exercised it for more than six months; and the requirement in sections 388(1)(g) and 422(1)(g) that a person must not have been condemned to a serious penalty, unless he has been rehabilitated, nor sued for ordinary offences at the time of election (this applies to trade union leaders only);
- the suspension, for up to three years, with loss of trade union rights, of trade union officers who have been responsible for the dissolution of their unions (new section 380(3) of the Code);
- the prohibition on federations and confederations from calling a strike (section 417(1) of the Code);
- the power of the Minister of Labour to submit *ex officio* to a ballot by all the workers in the enterprise as to whether they wish to submit persistent differences to arbitration (once a strike has been called) (section 448(3) of the Code);
- the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very wide range of public services which are not necessarily essential (new section 450(1)(a) of the Code and Decrees Nos. 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, 57 and 534 of 1967);
- the power of the Minister of Labour to refer a dispute to arbitration when a strike lasts for 60 calendar days (section 448(4) of the Code); and
- the possibility of dismissing trade union officers who have intervened or participated in an unlawful strike (new section 450(2) of the Code).

The Committee notes that the Government refers in its report to the mission on freedom of association which visited the country in October 1996. Furthermore, the Committee notes with interest the Government's statement in its report that it has prepared a Bill envisaging the repeal or amendment of various provisions of the Substantive Labour Code criticized by the Committee, and that the authorities of the

Ministry of Labour have undertaken to submit this Bill to the Congress of the Republic during the current legislative period. In practice, the Bill repeals or amends the following provisions: section 365(g) on the requirement, in order for a trade union to be registered, that the labour inspector must certify that there is no other union (repealed); section 384 on the requirement that, in order to form a union, two-thirds of its members must be Colombian (repealed); section 388(1)(c) on the need to be of Colombian nationality to hold executive office in a trade union (repealed); section 388(c) on the requirement to have normally exercised the activity, trade or position characteristic of the trade union in order to be a trade union officer (repealed); section 432(2) on the need to be of Colombian nationality in order to be a member of a delegation submitting to an employer the list of claims that are being made (the requirement to be of Colombian nationality is eliminated); section 486 on the supervision of the internal management of trade unions and meetings of unions by public servants (all reference to the trade union organization or its members is deleted); section 444, last subsection, on the presence of the authorities at general assemblies convened to vote on referral to arbitration or on the calling of a strike (under the Bill, this will only be possible when the trade union organization concerned requests such presence); section 422(1)(c) on the need to have exercised the activity, occupation or position characteristic of the trade union in order to hold office in a federation or confederation (repealed); sections 388(f) and 422(f), which provide that a person must not have been condemned to a serious penalty, unless he has been rehabilitated, nor sued for ordinary offences at the time of election (amended; the new wording is "not have been found guilty or put on trial for offences prejudicial to the discharge of trade union activities"); section 380(3), which provides that "any member of a trade union executive who has been responsible for the dissolution of the union as a sanction may be denied the right of trade union association in any form for up to three years (...)" (repealed); section 417(1), which provides that "federations and confederations have the right to the recognition of their legal personality and have the same functions as trade unions, except for the calling of a strike, which is the sole competence, when so authorized by the law, of the respective trade unions or groups of workers directly or indirectly concerned" (the prohibition on federations and confederations from calling a strike is deleted); and section 448(3), which provides that when a strike is called, the Minister of Labour and Social Security, *ex officio* or at the request of the trade union or trade unions representing the majority of workers at the enterprise, or if not, of the workers gathered in a general assembly, may submit to a ballot by all the workers in the enterprise whether they wish to submit persistent differences to arbitration (...) (the words "*ex officio*" are deleted).

The Committee also notes that the Government transmitted to the mission a preliminary draft of a Bill defining the concept of essential public services, regulating the exercise of the right to strike in such services and containing other provisions for the peaceful settlement of collective labour disputes. Furthermore, the Committee notes that the Office made the comments requested by the Government on the above preliminary draft and that its provisions would be in greater conformity with the requirements of the Convention and the principles of freedom of association. In this context, the Committee notes the Government's statement in its report that the officials of the Ministry of Labour and the President's Office are examining the comments made by the ILO with a view to adapting the preliminary draft text to the principles of freedom of association.

In these conditions, the Committee expresses the firm hope that the above Bill and preliminary draft text will be submitted to the Congress of the Republic as soon as possible and that the corresponding Acts will be adopted in order to bring the legislation into conformity with the Convention and the principles of freedom of association. The

Committee requests the Government to transmit the text of the above Acts as soon as they are adopted.

Furthermore, the Committee is addressing a request directly to the Government.

[The Government is asked to report in detail in 1997.]

Congo (ratification: 1978)

The Committee notes the Government's report and the entry into force of Act No. 6-96 of 6 March 1996 amending and supplementing certain provisions of Act No. 45/75 of 15 March 1975 establishing the Labour Code. It also notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1850 and 1870 approved by the Governing Body in June and November 1996 (304th and 306th Reports of the Committee on Freedom of Association).

The Committee notes with interest that the Labour Code establishes the possibility of trade union pluralism in that occupational unions have the right to organize freely in all enterprises in Congo (section 210-2).

With regard to its previous comments, the Committee notes:

- as regards the need to amend the legislation on the minimum service "indispensable to safeguard the general interest" to be maintained in the public service, which is organized by the employer, wherein refusal to participate is deemed to constitute serious misconduct (section 248-16), in order to limit the minimum service to the operations which are strictly necessary to meet the basic needs of the population and within the framework of a negotiated minimum service, that the Government undertakes to review this provision in consultation with the social partners with a view to modifying it or adopting an implementing text. The Committee asks the Government to keep it informed of any developments in this matter and to provide a copy of the text modifying this provision of the Labour Code;
- as regards the fact that the Labour Code contains no provisions authorizing workers and employers to include in collective agreements a clause on the deduction of trade union dues from the wages of workers with the written consent of the latter, that, according to the Government, this question is on the agenda of the next session of the National Labour Advisory Commission and that, in cooperation with the social partners, a procedure will be adopted which takes account of the requirements of the Convention. The Committee asks the Government to keep it informed of any developments in this respect in its future reports.

Lastly, with regard to Cases Nos. 1850 and 1870, the Committee asks the Government to report on the progress of the draft amendment to the Act on the right to strike in the public service. It trusts that any amendment will be consistent with the principles of freedom of association and that restrictions, or prohibitions, of the exercise of the right to strike will be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, namely services the interruption of which would endanger the life, health or safety of the whole or part of the population, which is not the case of the post and telecommunication services as such.

Costa Rica (ratification: 1960)

The Committee notes the Government's report and the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1695 (see the 302nd Report, paragraphs 246-255, approved by the Governing Body at its 265th Session in March 1996). The Committee recalls that its previous comments concerned:

- the prohibition on foreigners from holding office or exercising authority in trade unions (section 60(2) of the Constitution);
- the prohibition upon exercising the right to strike in the public sector and in the agricultural, stock-raising and forestry sectors (sections 368 and 369(a) and (b) of the Labour Code).

With reference to the prohibition placed on strikes by pilots in the airline LACSA (Case No. 1695), based on sections 368 and 369(c) of the Labour Code, the Committee draws the Government's attention to the principle whereby the right to strike may be limited, or even prohibited in the public service should be limited to public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see the General Survey on freedom of association and collective bargaining, 1994, paragraphs 158 and 159). In accordance with the above principle, transport services in general are not essential "in the strict sense of the term" and the Committee of Experts therefore concurs with the Committee on Freedom of Association in requesting the Government to take measures to amend the legislation so as to guarantee the right to strike in the air transport sector and, in general, in all services that are not essential in the strict sense of the term.

The Committee notes the Government's statement that it will transmit the comments of the Committee of Experts to the competent authorities and that the Assembly has still not approved the Bill respecting the occupational capitalization and economic democratization fund and the Bill on the statutory system of public employment and the civil service.

The Committee expresses the firm hope that the Government will take the necessary measures to eliminate from the legislation the prohibitions on the exercise of the right to strike in the public sector, as set out above, and in the agricultural, stock-raising and forestry sectors, as well as in transport services, and to introduce the possibility for foreigners to hold office in trade union organizations, at least after a reasonable period of residence in the country.

The Committee requests the Government to transmit any draft text that is formulated in relation to the above matters so that it can analyse its conformity with the principles of freedom of association.

[The Government is asked to report in detail in 1997.]

Côte d'Ivoire (ratification: 1960)

The Committee notes the Government's report as well as the information it communicated to the Conference Committee in June 1995 and the discussion which ensued on that occasion.

The Committee notes with interest the amendments introduced by Act No. 95-15 of 12 January 1995 establishing a Labour Code. In particular, it notes that section 82-11 of the Code restricts the powers of the President of the Republic to submit a collective difference to compulsory arbitration to cases in which it is admissible to interrupt or prohibit a strike in accordance with the principles of freedom of association (essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in cases of acute national crises).

The Committee requests the Government to send with its next report a copy of communication No. 00321/EFPPS/DERT of 4 March 1996 and circular No. 0322/EFPPS/DERT of 4 March concerning the abolition of prior agreement for establishing trade unions.

Cuba (ratification: 1952)

The Committee notes the Government's report and recalls that its previous comments referred to:

- the need to remove the reference to the "Central Organization of Workers" from the Labour Code and other legal texts; and
- interference by the Communist Party of Cuba in the election of trade union leaders.

With reference to the matters that have been raised, the Committee takes due note of the Government's comments, and in particular its interest in the daily recognition of the autonomy and independence of trade union organizations in their everyday activities, as demonstrated by the amendments made in 1992 to the Constitution (article 7) and the number of laws that have been adopted or amended at the initiative of *the workers and their trade unions* as a result of independent discussions in their congresses.

The Government adds that there is no provision in the current legislation that specifies the content of trade union rules and by-laws, or the manner in which leaders shall be elected, since these matters are the exclusive responsibility of their own trade union organizations, as set out in section 15 of the Labour Code. The by-laws, rules and resolutions that they adopt, as well as their content, and the structure, principles and relations of trade unions, are discussed and adopted with absolute independence by the congresses of the respective trade union organizations.

The Committee also duly notes that, according to the Government's statement, the Labour Code will have to be submitted to a process of revision and updating in order to adapt it to the new socio-economic conditions. The revision of the labour legislation is one of a series of transformations affecting the country, which include its opening up to foreign investment, despite the obstacles to which this gives rise and their consequences on the system of labour relations. The matters raised by the Committee of Experts will be analysed during this process in consultation with *the workers*.

Taking into account the context of the single-party system and the single central trade union organization, the Committee emphasizes that the Government should guarantee in law and in practice the right of *all workers* to establish independent occupational organizations in full freedom, at both the first and central levels, including organizations that are outside any existing trade union structure, if they so wish.

So that the above can be reflected with full clarity in practice, the Committee requests the Government, on the occasion of the envisaged revision of the labour legislation, to remove from the Labour Code and other legal texts, the explicit reference to the "Central Organization of Workers". The Committee has already suggested that this term could be placed in the plural without initial capital letters.

The Committee once again requests the Government to keep it informed of any progress achieved in this respect.

Cyprus (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Restrictions on the right to strike.* With reference to its previous comments on the need to amend sections 79A and 79B of the Defence Regulations, which allow the Council of Ministers to ban strikes in certain services which it considers essential, the Committee notes that the Government's latest report contains no information on any further developments following the tripartite meeting of October 1992, held under the chairmanship of the Minister of Labour and Social Insurance, at which the Minister of Finance was also present, and which was to examine this matter.

> The Committee recalls that the notion of essential services in the context of international labour Conventions covers solely those services, the interruption of which would endanger the life, safety or health of the whole or part of the population. It trusts that new provisions that are in keeping with these principles will be adopted in the near future and again asks the Government to inform it of any new developments in this respect in its next report, and particularly to provide the text of any new provisions as soon as they have been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Denmark (ratification: 1951)

With reference to its previous comments concerning the need for the Government to amend its legislation to ensure that non-resident workers employed aboard Danish ships are free to be represented in collective bargaining by organizations of their own choosing, the Committee notes the Government's indication in its latest report that the structural changes in the shipping industry, resulting in the establishment of second registers, call for a discussion at the international level. Then, discussions within the ILO with the social partners could be based upon a study made on the effects of second registers on non-domiciled seafarers' working and living conditions.

The Committee once again recalls that section 10 of Act No. 408 of 1988 which established the Danish International Ships' Register (DIS) prevents workers employed on board Danish ships but who are not residents of Denmark from being represented in collective bargaining by organizations of their own choosing, in contravention of *Articles 2, 3 and 10 of the Convention*. It once again expresses the hope that steps will be taken in the near future to ensure these non-resident workers the right to be represented by organizations of their own choosing and requests the Government to keep it informed of any progress made in this regard.

Djibouti (ratification: 1978)

The Committee notes with regret that no report has been received from the Government.

The Committee also notes with concern the report of the Committee on Freedom of Association in Case No. 1851 concerning serious violations of freedom of association against several members of the Djibouti Inter-Trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD) (see the 304th Report of the Committee on Freedom of Association approved by the Governing Body in May-June 1996.) The Committee urged the Government to take measures as soon as possible to lift the severe penalties imposed following protest strikes against the Government's economic and social policy.

The Committee recalls that its previous comments also concerned the need to repeal or amend the following provisions:

- section 5 of the Act on Associations, as amended in 1977, to abolish prior authorization for the establishment of trade unions by specifying that the Act does not apply to trade unions;
- section 6 of the Labour Code, which limits the holding of trade union office to Djibouti nationals, in order to allow foreigners to hold trade union office, at least after a reasonable period of residence in the country;
- section 23 of Decree No. 83099/PR/FP of 10 September 1983 establishing the conditions governing the right to organize and the right to strike of public servants, which confers on the President of the Republic the power to requisition public

servants who are indispensable to the life of the nation and to the operation of essential services, in order to restrict this power of requisitioning to cases in which, in the Committee's opinion, the restrictions or prohibitions of the exercise of the right to strike are admissible, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in the event of an acute national crisis.

The Committee, like the Committee on Freedom of Association, requests the Government to take measures in the near future to bring its legislation and practice into conformity with the requirements of the Convention and to inform it of progress made in this matter.

[The Government is requested to report in detail in 1997.]

Dominican Republic (ratification: 1956)

The Committee notes the Government's report and the observations of the Sindicato Nacional de Trabajadores Agrícolas de Plantaciones Azucareras y Similares (SINATRAPLASI), the Sindicato de Picadores de Caña del Ingenio Barahona (SIPICAIBA) and the Sindicato de Trabajadores de las Plantaciones Agrícolas y Similares del Ingenio Barahona (SITRAPLASIB) on the application of the Convention.

The Committee recalls that its previous comments referred to:

- the requirement that federations must obtain a two-thirds majority vote in order to form confederations (section 383 of the Labour Code);
- the opposition of certain enterprises in free trade zones to the formation of unions, and the disregard of trade union privileges;
- the impugning of the registration of the Sindicato Unitario Agrícola y Fabril del Ingenio Cristóbal Colón (Case No. 1751).

In relation to the requirement that federations must obtain a two-thirds majority vote in order to form confederations, the Committee notes with interest that the Government indicates that, in practice, there has been no problem in obtaining such a majority as is proved by the existence of seven (7) workers' confederations.

Notwithstanding the above, the Committee hopes that the Government will take the necessary measures to remove from the law these restrictions on the constitution of confederations given that it should be for the federations' rules to contain criteria on the matter.

With regard to the opposition of certain enterprises in the free trade zones to the formation of trade unions, and the disregard of the rights protecting trade union officers, the Committee trusts that the Government will continue to inform it of any progress made in practice on the matter.

The Committee notes that the Government has not replied to its comment on the impugning before the courts of the registration of the Sindicato Unitario Agrícola y Fabril del Ingenio Cristóbal Colón and therefore asks the Government, once again, to take the necessary measures, including through any appropriate legal action, to guarantee the right to organize of the workers of the Ingenio Cristóbal Colón, and to keep it informed of developments in this respect.

In their comments, SINATRAPLASI, SIPICAIBA and SITRAPLASIB indicate restrictions on the free exercise of trade union rights for the workers on sugar plantations, and particularly the prohibition on movement and on contacting workers for trade union purposes in the *bateyes*.

The Committee hopes that the Government will make every effort to ensure that both in law and practice there is full exercise of trade union rights on sugar plantations.

The Committee once again asks the Government to inform it in its next report of any progress made on these matters.

Ecuador (ratification: 1967)

The Committee notes the Government's report and the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1767 (297th Report, paragraphs 295 to 305), which relates to the restrictions on the right to organize at the first and higher levels in the nursing sector, and recalls that its previous comments concerned:

- the ban on public servants from forming unions (section 10 (g) of the Civil Service and Administrative Careers Act of 8 December 1971);
- the increase from 15 to 30 of the minimum number of workers required for the establishment of trade union associations, including works councils (sections 53 and 55 of the Labour Code, new sections);
- the penalties of imprisonment for instigators of and participants in collective work stoppages (Decree No. 105, 7 June 1967);
- the requirement that the members of the executive committees of works councils be of Ecuadorian nationality (section 455 of the Labour Code);
- the dissolution by administrative decision of a works council when its membership drops below 25 per cent of the total number of workers (section 461 of the Code);
- the prohibition placed on unions from taking part in religious or political activities and the requirement that this must be established in union statutes (section 443 (11) of the Code).

In this respect, the Committee regrets to note that the Government has not provided any reply to the comments that it has been making for many years and that it has confined itself to stating that the National Congress has not yet dealt with the legal reforms.

With regard to the denial of the registration of the Federation of Free Nursing Auxiliaries of Ecuador (FAELE) and of various trade unions of workers in the same sector (on the grounds that they do not represent more than 30 affiliated members and because these workers are considered to be public servants, Case No. 1767), the Committee wishes to remind the Government that under the terms of Articles 2 and 5 of the Convention, workers "without distinction whatsoever" have the right to establish and join organizations of their own choosing "without previous authorization", both as first-level organizations and as federations and confederations.

The Committee once again requests the Government to take the necessary measures so that the draft legislative reforms to which it has been committed for some time permit public servants to establish trade unions; reduce the minimum number required for the establishment of first-level and higher trade union associations; prohibit the imposition of penalties of imprisonment on the instigators of strikes and those who participate in them, in accordance with the principles of freedom of association; modify the requirement to be of Ecuadorian nationality to be a member of the executive committee of a works council; ensure that the dissolution of a works council is only possible by judicial authority; and abolish the prohibition placed upon trade unions from taking part in religious or political activities.

The Committee once again expresses the firm hope that all of its comments will be taken into account in the new legislation and that the frequently announced adoption of this legislation will take place in the near future.

The Committee requests the Government to inform it in its next report of any positive developments on this matter and trusts that it will finally be able to note that the new legislation has been brought into conformity with the principles and provisions of the Convention.

Furthermore, the Committee is addressing a request directly to the Government.

[The Government is asked to report in detail in 1997.]

Egypt (ratification: 1957)

The Committee notes the information supplied by the Government in its report as well as the entry into force on 30 March 1995 of Act No. 12 of 1995 amending some provisions of the Trade Union Act No. 35 of 1976. The Committee regrets that the new legislation still contains a number of discrepancies with the requirements of the Convention in relation to the obligation to ensure that workers have the right to establish organizations of their own choosing and that workers' organizations have the right to elect their representatives and organize their administration and activities in full freedom.

1. *Articles 2 and 3 of the Convention.* In its previous comments, the Committee had recalled the need to amend:

(i) those provisions of Act No. 35 of 1976 on trade unions which institutionalized a single trade union system (sections 7, 13, 14, 16, 17, 41 and 52);

(ii) those provisions which enabled the Confederation of Egyptian Trade Unions to control the nomination and election procedures for trade union office (section 41); and

(iii) those provisions which enabled the Confederation to control the financial administration of trade unions (sections 62 and 65).

(i) The Government states in its report that most of the above-mentioned provisions, apart from sections 7 and 13, were amended by Act No. 12 of 1995. The Government states that sections 7 and 13 of Act No. 35 of 1976 were not amended because the trade unions themselves believe that the trade union movement should be organized on a single union and hierarchical basis. The Committee would recall however that Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish. Furthermore, the rights of workers who do not wish to join the existing trade unions or central organization should also be protected (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 96). The Committee also notes with regret that the remaining provisions which have been the subject of its comments for many years, namely sections 14, 16, 17 and 41, have not been amended in any meaningful manner by Act No. 12 of 1995, while section 52 has not been amended at all.

The Committee would therefore request the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995, are amended so that all workers will have the right to establish, should they so wish, occupational organizations outside the existing trade union structure, in conformity with *Article 2 of the Convention*.

(ii) The Committee further notes that the newly enacted sections 41 and 42 of Act No. 12 of 1995 still allow the Confederation of Egyptian Trade Unions to exercise control over the nomination and election procedures for trade union office. The Committee considers that provisions which allow supervision by the administrative authorities or the single trade union central organization of the election procedure, for example by requiring the acceptance or approval of elections or their results, are contrary to the principles of freedom of association (see General Survey, op. cit., paragraph 115). The Committee is of the view that the procedures for nomination and election to trade union office should be fixed by the rules of the organizations not by law in order to bring the legislation into conformity with Article 3 of the Convention. The Committee therefore requests the Government to take steps to ensure that sections 41 and 42 of Act No. 12 of 1995 are amended in line with the above comments.

(iii) Furthermore, the Committee notes with regret that sections 62 and 65 of Act No. 35 of 1976 have not been amended very substantially by Act No. 12 of 1995. The new section 62 of Act No. 12 of 1995 still contains the obligation for lower-level unions to allocate a certain percentage of their income to higher-level organizations. Moreover, the newly enacted section 65 stipulates, amongst other things, that "... the Trade Union Confederation shall exercise sole financial supervision of trade union organizations, and, to that end, may seek assistance from the organs of the Ministry of Manpower and Employment". The Committee would once again remind the Government that the above provisions, which specify the proportion of union funds that have to be paid to higher-level organizations and which allow the single central organization expressly designated by the law to exercise financial control, are contrary to *Article 3 of the Convention*. The Committee therefore requests the Government to take appropriate steps to ensure that sections 62 and 65 of Act No. 12 of 1995 are amended so that workers' organizations have the right to organize their administration, including their financial activities, without interference from the public authorities.

2. *Articles 3 and 10.* The Committee's previous comments referred to the need to repeal or amend sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 6 August 1981, concerning compulsory arbitration at the request of one party outside services which are essential in the strict sense of the term, and section 70(b) of Act No. 35 of 1976 on the Public Prosecutor's authority to ask the criminal courts to remove from office the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service.

The Government states in its report that the Committee's comments have been taken into consideration in the new draft Labour Code. The Committee hopes that any restrictions or prohibitions on the right to strike contained in the draft Labour Code are limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population (see General Survey, op. cit., paragraphs 158 and 159). The Committee requests the Government to supply, along with its next report, a copy of the provisions of the new draft Labour Code which repeal or amend sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 6 August 1981, and section 70(b) of Act No. 35 of 1976.

In addition a direct request regarding certain points is being addressed directly to the Government.

Ethiopia (ratification: 1963)

1. The Committee notes that the Government's report has not been received.

2. The Committee notes the comments made by the Ethiopian Teachers' Association (ETA) and Education International (EI) in a complaint lodged before the Committee on Freedom of Association (Case No. 1888), relating to alleged violations of freedom of association carried out by the Government vis-à-vis ETA, thereby resulting in ETA's inability to exercise any free and legitimate trade union activities. The Committee would request the Government to provide its comments on the above-mentioned observations especially in view of the fact that section 3(2)(b) of Labour Proclamation No. 42/1993 excludes teachers from its scope of application. The Committee would further request the Government to provide a copy, if any, of relevant legislation that allows teachers to establish and join organizations in order to promote their occupational interests.

3. The Committee had previously noted that a new law, which would govern employees of state administration, judges, prosecutors and others, was expected to be in effect in the near future. The Committee requests the Government to inform it, in its next report, of any progress made in the adoption of this draft legislation.

Germany (ratification: 1957)

The Committee notes the information contained in the Government's report.

With regard to the denial of the right to strike in the public service, the Government admits in its report that the right to strike is not recognized for public servants irrespective of the functions that they exercise, which might justify different treatment. With regard to public servants exercising authority in the name of the State, the Government states that these functions by their nature form part of the functions assigned to public servants. They are not limited in the strict sense of the term and include a substantial number of general administrative services. Nevertheless, the Government reiterates the information that it provided previously to the effect that it has adopted a policy of reducing public services and limiting them to essential activities and that it therefore favours the privatization of other services. Of the 1,000 enterprises with public participation in 1982, the number has now been reduced to 400. With regard more specifically to employees in the railways and postal services, which are subject to privatization measures, the Government recalls that they can continue to benefit from their status as public servants. In this case, the right to strike is denied to them; however, if they so wish, they may conclude a contract of employment directly with the privatized company. According to the Government, this issue will soon become academic since there will no longer be any public servants employed in privatized enterprises.

The Committee notes the information supplied by the Government.

The Committee recalls, however, that since 1959 it has been expressing the opinion that the prohibition of strikes by public servants other than public officials acting in the name of the public powers may constitute a considerable restriction of the potential activities of trade unions and that this restriction may run counter to *Article 8, paragraph 2, of the Convention* (see the reminder of this position in the 1994 General Survey on freedom of association and collective bargaining, paragraph 147). The Committee emphasizes the importance of taking the necessary measures so as not to penalize public servants who are not exercising authority in the name of the State, whether they are railway workers, postal workers, teachers or others, or their organizations, for having exercised the right to strike. The Committee requests the Government to indicate any measure taken in this respect in its next report.

Ghana (ratification: 1967)

The Committee notes the information supplied by the Government in its report.

1. The Committee had noted in its previous observations that the National Advisory Committee on Labour (NACL) had recommended that sections 11(3) and 12(1) of the Trade Union Ordinance of 1941 be amended and repealed, respectively, so that the Registrar no longer had extensive powers to oppose the registration of a trade union.

The Committee has also pointed out section 3(4) of the Industrial Relations Act No. 299 of 1965, which stipulates that the Registrar shall not appoint a trade union for collective bargaining purposes for any class of employees if there is in force a certificate appointing another trade union for that class of employees or any part of that class, and it had noted that the NACL recommended amending that section. The Committee had considered that it should be amended so that a union with the support of a simple majority of the members of a bargaining unit be granted a certificate.

The Committee had requested the Government to take steps to give effect to these recommendations so as to bring its legislation into conformity with *Articles 2 and 3 of the Convention*.

The Committee notes the assurances of the Government in its report that the recommendations for the amendment of said sections had been forwarded to the competent authority.

The Committee recalls that it has commented on these matters for a number of years and it asks the Government to take effective steps to amend its legislation at an early date, and to keep it informed of any progress made in this respect and to communicate the texts of the amendments as soon as they have been adopted.

2. The Committee had noted that section 6 of the Emergency Powers Act, 1994 (Act No. 472), prohibits public meetings and processions in areas which had been under a state of emergency. The Committee notes the Government's statement that the Act is applicable only in exceptional cases, to areas where a state of emergency has been declared and for the duration of the state of emergency only. The Government further states that the Act is not intended to be of general application within the country nor is it directed against the activities of workers or unionized labour which could lead to an infringement of their right to assemble freely. The Government communicated the Committee's concern to the Attorney General and will convey his reaction in due course.

While noting the Government's statement, the Committee observes that the Emergency Powers Act (No. 472), 1994, provides for very extensive powers (such as the suspension of operation of any law, section 6(2)(viii)) and it wishes to recall once more that freedom of assembly and demonstration constitutes a fundamental aspect of trade union rights (General Survey on freedom of association and collective bargaining, 1994, paragraphs 35-37) and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and again urges the Government to repeal this legislation or to exclude explicitly the fundamental trade union rights from its scope of application.

Greece (ratification: 1962)

The Committee notes the information supplied by the Government in its report as well as the statement made by the Government representative to the Committee on the Application of Standards at the Conference in June 1996 and the discussion which took place thereafter.

While recalling that its previous comments related to freedom of association of seafarers, the Committee notes the Government's statement that the Pan-hellenic Federation of Seafarers was functioning freely and independently. According to the Government, a legal provision has partly suppressed the exclusion of seafarers from the application of Act No. 1264 of 1982 on trade unions. The Government affirms that it will endeavour to ensure that seafarers benefit from the same trade union freedoms as other workers.

The Committee notes this information and requests the Government to send it the legal provision which has partially suppressed the exclusion of seafarers from the application of Act No. 1264 of 1982 as well as any legislation enacted or contemplated with a view to giving these workers all the rights guaranteed by the Convention.

Guatemala (ratification: 1952)

The Committee notes the Government's report, the information supplied by the Government representative to the Conference Committee on the Application of Standards in June 1996 and the discussions which took place in that Committee.

The Committee wishes to recall that its previous comments referred to:

- the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);
- the requirement of Guatemalan nationality in order to form part of the provisional founding executive committee of a trade union or to be eligible for trade union office (new paragraph (d)) of section 220 and section 223(b));
- the requirement of a sworn statement from members of the provisional founding executive committee of a trade union to the effect that, amongst other matters, they have no criminal record and are active workers within the enterprise or are working on their own account (new paragraph (d) of section 220);
- the requirement that candidates must be active workers at the time of election and that at least three of them must be able to read and write (section 223(b));
- the requirement of a majority of two-thirds of the workers in the enterprise or production centre (section 241(c)) and of the members of a trade union (section 222(f) and (m)) for the calling of a strike;
- the prohibition of strikes or work stoppages by agricultural workers at harvest time, with a few exceptions (section 243(a) and 249);
- the prohibition of strikes or work stoppages by workers in enterprises or services in which the Government considers that a suspension of their work would seriously affect the national economy (sections 243(d) and 249);
- the possibility of calling upon the national police to ensure the continuation of work in the event of an unlawful strike (section 255);
- the detention and trial of persons who call for an illegal strike (section 257);
- the sentence of one to five years' imprisonment for persons who carry out acts intended not only to cause sabotage and destruction (which do not come within the scope of the protection provided by the Convention), but also to paralyse or disturb the functioning of enterprises contributing to the development of the national economy, with a view to jeopardizing national production (section 390, paragraph 2, of the Penal Code).

The Committee takes due note that, in accordance with the Government's indications, almost all the questions raised in the Committee of Experts' comments will be submitted for consideration to the already existing Tripartite Committee on International Affairs for the purpose of formulating a Bill. The Committee also takes note that the Government requests ILO collaboration to this effect.

The Committee once again expresses the firm hope that, in drawing up the Bill, the Tripartite Commission will take into account at an early date the comments previously made and that in its next report the Government will supply information on the specific measures adopted to bring both legislation and practice into conformity with the requirements of the Convention.

The Committee requests the Government to send in a detailed report on the specific measures adopted in this respect.

Guyana (ratification: 1967)

The Committee notes the information provided in the Government's latest report.

1. In its previous comments, the Committee noted the Government's indication that the Trade Union Recognition Bill, which is to contain provisions establishing objective, pre-established and precise criteria for determining the most representative union for collective bargaining purposes, was still under consideration. The Committee notes from the Government's latest report that the Bill was tabled in Parliament but was not taken through all the stages because the Guyana Trade union Congress objected to a section concerning dispute settlement. The Committee once again expresses the firm hope that this Bill will be adopted in the near future and that it will contain the necessary safeguards for an objective determination of the exclusive bargaining agent in a given unit. It requests the Government to indicate the progress made in this regard in its next report.

2. As concerns its previous comment in respect of the need to amend the Public Utility Undertakings and Public Health Services Arbitration Act, chapter 54:01, so that compulsory arbitration in respect of strikes is only used for essential services in the strict sense of the term, the Committee notes from the Government's latest report that the industrial disputes subcommittee of the standing tripartite committee has been mandated to recommend changes to this Act. The Committee once again trusts that measures will be taken in the near future to ensure that compulsory arbitration is only used in respect of services whose interruption would endanger the life, personal safety or health of the whole or part of the population and requests the Government to indicate, in its next report, the progress made in this regard.

Haiti (ratification: 1979)

The Committee notes the Government's reports and recalls that, for many years, its comments have referred to the need:

- to repeal or amend section 236bis of the Penal Code, which requires that government approval be obtained to establish an association of more than 20 persons; section 34 of the Decree of 4 November 1983, which confers wide powers on the Government to supervise trade unions; and sections 185, 190, 199, 200 and 206 of the Labour Code, which impose restrictions on the right to strike;
- to give legal recognition to the right to organize of public servants, in order to bring its legislation into conformity with section 35(3) and (4) of the 1987 Constitution, which provides constitutional guarantees of the freedom of workers in the public and private sectors and recognizes their right to strike, and thus to bring it into conformity with the provisions of the Convention.

The Committee welcomes the Government's request for ILO technical assistance and its undertaking to amend the provisions of its legislation which are not in conformity with the Convention. The Committee hopes that the next report will show significant progress in bringing the whole of its legislation into conformity with the requirements of the Convention.

Honduras (ratification: 1956)

The Committee notes the Government's report and recalls that its previous comments concerned:

- the exclusion from the scope of the Labour Code of workers in certain agricultural or stock-raising enterprises (section 2(1));
- the prohibition of more than one trade union in a single enterprise, institution or establishment (section 472);
- the requirement that trade union officers must be Honduran and be engaged in the corresponding activity (sections 510(a) and (c) and 541(a) and (c), respectively);
- restrictions on the right to strike, sections 495 and 563 (requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike), 537 (ban on strikes being called by federations and confederations), 555(2) (the power of the Minister of Labour and Social Security to end disputes in services for the production, refining, transport and distribution of petroleum), 558 (the need for government authorization for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State), and sections 820 and 826 in conjunction with section 554(2) and (7) (which establishes compulsory arbitration without the possibility of calling a strike for as long as the arbitration award is in force (two years), for collective disputes in public services which are not essential in the strict sense of the term, such as transport services in general, and services for the production, refining, transport and distribution of petroleum, respectively).

The Committee notes with interest that the preliminary draft (December 1995) of the reform of the Labour Code prepared by the Tripartite Committee takes account of most of its comments:

- it eliminates the exclusion from the scope of the Labour Code of workers in certain agricultural or stock-raising enterprises (section 2(1)), *section 2 of the preliminary draft*;
- it eliminates the requirement that trade union officers must be engaged in the corresponding occupation, and allows foreigners who have been resident in the country for at least five years to stand for election to trade union office (sections 510(a) and 541(c)), *section 431(a) of the preliminary draft*;
- it reduces the two-thirds majority of the votes of the total membership of the trade union organization required to declare a strike (sections 495 and 563) to a simple majority of the workers in the enterprise or trade union assembly *section 517(c) of the preliminary draft*;
- it eliminates the ban on strikes being called by federations and confederations (section 537), *section 448 of the preliminary draft*;
- it eliminates the restrictions on the right to strike constituted by the power of the Minister of Labour and Social Security to end a dispute in services for the production, refining, transport and distribution of petroleum (section 555(2)), and by the requirement that any suspension or stoppage of work in public services that do not depend directly or indirectly on the State is subject to government authorization or six months' notice (section 558);

- as concerns compulsory arbitration in the public service (section 820 of the Labour Code), the Committee notes with interest that, in conformity with *sections 521 and 502 of the preliminary draft*, arbitration will only be applied in the cases where there is a dispute between workers and employers in the public services covered by *section 529 of the preliminary draft*, which, in the opinion of the executive power, are of vital importance to the *life and safety of the population* (subsection 9). Nevertheless, the Committee regrets to note that included among the services in question are those for the production, refining, transport and distribution of petrol and its by-products (subsection 7), which are not essential services "in the strict sense of the term";
- as concerns the services under all branches of activity of the public authority and any other branches which, in the opinion of the executive power, are of vital importance to the *economy of the population*, upon declaration of the President (subsections 1 and 9), the Committee considers that the general and broad drafting of these provisions is susceptible to being interpreted in a manner which would unduly restrict the right to strike. The Committee is of the opinion that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State (see General Survey on freedom of association and collective bargaining, 1994, paragraph 158). Finally, as concerns services of vital importance to the economy of the population, the Committee is of the opinion that strike bans can only be justified in situations of acute national crisis.

The Committee also notes with regret that the preliminary draft does not amend section 472 of the existing Code, which bans the existence of more than one trade union in a single enterprise, institution or establishment.

The Committee wishes to point out once again in this connection that although it is not the purpose of the Convention to make trade union diversity an obligation, it does require this diversity to remain possible in all cases. There is a fundamental difference between a trade union monopoly established or maintained by law on the one hand and, on the other, voluntary groupings of workers which occur because they wish to strengthen their bargaining position. The Committee has acknowledged that excessive proliferation of occupational organizations can weaken the trade union movement. None the less, trade union unity imposed by law runs counter to the standards expressly laid in the Convention (see General Survey, op. cit., paragraph 91).

In this connection, the Committee believes that legislative provisions establishing the concept of the most representative trade unions are not in themselves contrary to the principle of freedom of association, provided that the determination of such organizations is based on objective and pre-established criteria so as to avoid any possibility of bias or abuse. Furthermore, the distinction should generally be limited to the recognition of certain preferential rights — for example, for such purposes as collective bargaining and consultation by the authorities. Where legislation provides for recognition of an enterprise union as an exclusive bargaining agent, certain safeguards should be attached, such as the election of the representative organization by a majority vote of the employees in the bargaining unit concerned, the right of an organization, which in a previous election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period (see General Survey, op. cit., paragraph 240).

Furthermore, the Committee notes the Government's indication that the draft reform of the Labour Code is awaiting adoption. In this connection, bearing in mind the direct contacts mission carried out in 1986, the discussions in a number of sessions of the

Conference Committee and the Office's technical assistance to the Government and the social partners in the preparation of the preliminary draft of the Labour Code, the Committee hopes that the Code will now be adopted and that it takes account of all the comments the Committee has been making for many years.

The Committee again requests the Government to keep it informed of any developments in this connection and to send a copy of the new Code as soon as it has been adopted.

Jamaica (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that for several years its previous comments concerned the necessity to amend sections 9 and 10, paragraphs 1, 2, 4, 5 and 8 of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended in 1978, which empower the Minister to submit an industrial dispute to compulsory arbitration and hence to terminate any strike. The Committee has noted in the past that the list of essential services contained in the legislation is too broadly defined and that the notion of a strike which is liable seriously to jeopardize the interests of the nation can be interpreted very widely.
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> The Government indicates that the Labour Relations and Industrial Disputes Act is being revised and that the right to strike is one of the key areas examined. The Government adds that before deciding what sectors should be regarded as essential services, it has to carefully examine the dependence on the economy of these services.
>
> The Committee reiterates that the right to strike is one of the essential means which should be available to workers and their organizations to promote and defend their economic and social interests. The Minister of Labour should therefore only be able to have recourse to the courts in the following circumstances: (1) in the event of strikes in essential services in the strict sense of the term, namely those, the interruption of which would endanger the life, personal safety or health of the whole or part of the population; or (2) in the event of total and prolonged stoppage of work which might constitute an acute national crisis; or (3) at the request of the two parties concerned (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 152, 154, 159 and 160).
>
> The Committee urges the Government to provide information in its next report on the outcome of the reviewing process of the Labour Relations and Industrial Disputes Act and to indicate the measures taken to amend its legislation in order to bring it into conformity with the principles of freedom of association.
>
> The Committee is also addressing a request directly to the Government concerning some other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1965)

The Committee takes note of the Government's report and of the detailed oral and written information supplied by the Government to the Conference Committee in June 1995 as well as the discussion which took place thereafter. It also notes the comments made by the Japanese Trade Union Confederation (JTUC-RENGO).

1. *Denial of the right to organize of fire-fighting personnel.* The Committee notes from the information supplied by the Government in its report and to the Conference Committee that the Ministry of Home Affairs, the Fire Defence Agency and the All-Japan Prefectural Municipal Workers' Union (JICHIRO) continued to hold consultations in order to find an appropriate solution to the issue of the right to organize of fire-

fighting personnel. The Committee also notes that as a result of these consultative efforts, an agreement was reached on the introduction of a new system to guarantee the participation of fire defence personnel in the process of determining their working conditions and improving such conditions.

According to the Government, the new system would be as follows: (1) a fire defence personnel committee would be established in each fire defence headquarters throughout the nation; (2) the committee would discuss opinions to be presented by fire defence personnel on improvement of working conditions or other subjects, and the committee would present its observations to the fire chief; (3) the committee would be formed by fire defence personnel, half of whom would be appointed on the basis of recommendations of members of the respective unit; (4) the fire chief would respect the intention of the committee's observations and strive to improve working conditions or other matters regarding fire defence personnel. Legislative amendments to establish this new system have been undertaken through the introduction of a Bill to amend the Fire Defence Organization Law. The Government states that the Bill was passed on 20 October 1995 with the unanimous approval of ruling and opposition parties and promulgated on 27 October.

In addition, the Government states that the important points of this system were the guarantee of "locality" and "participation of personnel" in deciding the working conditions of fire defence personnel, which JICHIRO had demanded throughout the consultations. Regarding locality, this system would be established in each of the 925 fire defence headquarters across the country. With respect to personnel participation, all personnel could put forward opinions to the committee concerning improvements in their working conditions, individual outfits or other matters. Thus this new system would guarantee the participation of fire defence personnel in the process of deciding their working conditions and would be in line with the spirit of the protection of their rights.

Finally, the Government states in its report that in order to implement this new system, it has held a national meeting with local governments and has made other efforts to inform them of the new system. Furthermore, in cooperation with the parties concerned such as labour organizations, fire defence headquarters, etc., the Government is making preparations so that this system will operate smoothly.

The Committee further notes the comments made by JTUC-RENGO that the relevant laws have already been revised and that the necessary steps to set up a fire-fighting staff committee in each fire defence headquarters have been taking place.

The Committee takes note of the above information with interest. The Committee would request the Government to supply a copy of the amended law and to provide information on the operation of the new system.

2. *Prohibition of the right to strike of public servants.* The Government states in its report that the Supreme Court has maintained in a judgement that the prohibition of the right to strike by public employees is constitutional. The Committee recalls that the prohibition on strikes should be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes that according to JTUC-RENGO there is a total ban on the right to strike for government employees both at the national and local levels, including for public school teachers. The JTUC-RENGO adds that dismissals and other sanctions due to strike action are quite common and several government employees, including teachers, have filed cases in court.

The Committee requests the Government to provide its comments on the observations made by JTUC-RENGO in its next report. It would also once again ask the Government to indicate the measures taken or envisaged to limit the prohibition of the right to strike of public servants only to those exercising authority in the name of the State or those providing essential services.

Kuwait (ratification: 1961)

The Committee notes the information supplied by the Government in its reports as well as the information provided by a Government representative to the Conference Committee in June 1996, indicating that draft legislation (Bill) to amend or repeal certain provisions of the Labour Code (Act No. 38 of 1964), in order to bring it into conformity with the Convention, has been submitted to, and approved by, the Council of Ministers and is currently undergoing other procedures.

While noting with interest that this Bill, which was drawn up with ILO technical assistance, removes certain restrictions on freedom of association contained in current legislation, the Committee observes that divergencies still remain between the Bill and the Convention on the following points:

- the requirement of at least ten *Kuwaiti* employers to form an association *(section 101)*;
- the requirement that at least 15 founder members must be *Kuwaiti* in order to establish a trade union *(subsection 102(1))*;
- the requirement that a certificate of good conduct be obtained by each founder member from the Ministry of Interior before a trade union may be established *(section 103(e))*;
- the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution *(section 110)*.

The Committee would request the Government to take the appropriate steps shortly, and in any event before the adoption of the draft legislation in order to ensure that the above-mentioned provisions, which have been the subject of the Committee's comments for several years, are brought into line with the requirements of the Convention.

Furthermore, the Committee notes the Government's statement that *section 2* of the Labour Code concerning the exclusion of certain categories of workers from the scope of the Code has been repealed and replaced by a draft text which is contained in the Bill. The Government adds that *section 12* of the Bill takes into account the Committee's previous observations on *sections 71, 72, 73, 74, 79, 80 and 86* of the Labour Code.

The Committee requests the Government to provide a copy of the draft texts that replace *sections 2, 71, 72, 73, 74, 79, 80 and 86* of the Labour Code along with its next report. It would further request the Government to indicate in its next report whether the Bill, which it hopes will be adopted shortly, amends or repeals *section 88* of the Labour Code concerning restrictions on the free exercise of the right to strike.

Liberia (ratification: 1962)

The Committee notes with regret that for the seventh year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that there has been no change in the legislative situation, which has been the subject of its comments for many years.

The Committee recalls the need to amend or repeal Decree No. 12 of 30 June 1980 which prohibits strikes, section 4601-A of the Labour Practices Law which prohibits agricultural workers from joining industrial workers' organizations, and section 4102, subsections 10 and 11, of the Labour Practices Law which provides for the supervision of trade union elections by the Labour Practices Review Board. The Committee observes that these provisions are still in force and that they are contrary to *Articles 2, 3, 5 and 10 of the Convention*.

Furthermore, the Committee recalls that the right to associate of workers in state enterprises and the public service is still not recognized in the national legislation, despite the Government's assurances in previous reports that the Civil Service Act was to be amended in order to give statutory effect to the right of the workers in this sector to establish and join organizations of their own choosing, in accordance with *Article 2 of the Convention*.

However, in its previous observation, the Committee noted from the information furnished by the Government to the Conference Committee in 1987 that, in practice, there are organizations of public servants and of rural workers, that strikes have occurred without sanctions being applied and that trade union elections are only supervised by the Ministry of Labour at the invitation of the trade union organization in question.

Accordingly, the Committee again urges the Government to take the necessary measures in the very near future to amend its legislation in respect of the above matters which have repeatedly been the subject of its comments.

Madagascar (ratification: 1960)

The Committee notes the report of the Government and the entry into force of Act No. 94-029 issuing the Labour Code in 1994. It recalls that its previous observations related to the following points:

1. *The right of workers*, without distinction whatsoever, including *seafarers*, to establish and join organizations. The Committee takes due note that the Government specifies in its report that the Christian Federation of Seafarers of Madagascar (FECMAMA), affiliated to the trade union SEKRIMA, effectively represents seafarers. However, the Committee again asks the Government to provide in its next report the text currently in force of the Merchant Shipping Code, since the new Labour Code continues to exclude workers governed by the Merchant Shipping Code (section 1 *in fine* of the Labour Code).

2. *Requisitioning of persons*. Recalling that the conditions giving rise to the right to requisition persons set out in Act No. 69-15 of 15 December 1969 are too broad to be compatible with the principles of freedom of association, the Committee notes that the provisions of the above Act have not been amended by the new Labour Code. The Committee again asks the Government to contemplate amending its legislation, particularly sections 20 and 21 of Act No. 69-15, so that it authorizes the Minister to resort to this procedure only to end a strike in essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the case of public servants exercising authority in the name of the State or in the event of an acute national crisis. The Committee asks the Government to keep it informed of the measures taken or envisaged in this matter.

The Committee is also addressing a direct request to the Government.

Mali (ratification: 1960)

The Committee notes the information contained in the Government's reports.

The Committee noted the Government's statement in its previous report that it was examining the possibility of amending section 229 of the Labour Code of 1992 so that the Minister's powers to order compulsory arbitration in order to end a strike would be limited to cases of acute national crisis.

The Committee notes from the Government's statement in its report which arrived in June 1995 that the Council of Ministers can only render an arbitration decision binding if the strike is likely to endanger the life, health or safety of the population or dangerously paralyse an essential sector of the economy, without indicating whether it will amend the legislation. The Government adds in its report which arrived in November 1996 that a tripartite commission has been mandated to make proposals on any problems which might arise from the scope of section 229 of the Code.

The Committee notes that section 229 provides that the Minister of Labour may refer certain disputes to the Council of Ministers, which may render an arbitration decision binding not only in disputes relating to "essential services the interruption of which would endanger the life, security or health of the population", which is compatible with the principles of freedom of association, but also in disputes liable to "compromise the normal operation of the national economy or concerning a vital sector of professions".

The Committee therefore once again requests the Government to amend the legislation and to provide information in its next report on any progress made to limit the powers of the Council of Ministers to render an arbitration decision binding to cases of acute national crisis, in order to bring its legislation into conformity with the Convention.

Malta (ratification: 1965)

The Committee notes the information provided by the Government in its reports. It notes that the representatives on the tripartite Malta Council for Economic Development have agreed that there is a need to improve the machinery available for conciliation in trade disputes so as to promote speedy, voluntary settlements and to improve and expedite the arbitration procedures. It further notes the Government's indication that the consultation process has reached an advanced and delicate stage which will hopefully lead to the presentation of amendments to the Industrial Relations Act to Parliament within the not too distant future.

The Committee must recall that it has been making comments on the incompatibility between the Industrial Relations Act and the provisions of the Convention since 1970. It must therefore regret that the Government has only been able to reiterate its previous indications that the proposals to amend the Act are being studied by the Malta Council. It would recall that the discrepancies between the legislation and the Convention have to do, in particular, with the broad use of compulsory arbitration, whereas recourse to such arbitration should be restricted to the following cases: (a) public servants exercising authority in the name of the State; (b) essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request arbitration.

The Committee hopes that the Government will take the necessary measures in the very near future to bring its legislation into conformity with the Convention and recalls that ILO technical assistance is available to assist in the formulation of amendments to give effect to the Convention if the Government so desires.

Mauritania (ratification: 1961)

1. *Article 3: Right of organizations to elect their representatives in full freedom.* Referring to the need to modify section 7 of the Labour Code as amended by Act No. 93-038 of 20 July 1993 which reserves the right of access to trade union office to those of Mauritanian nationality, the Committee notes the indication in the Government's report that section 273 of the draft Labour Code provides that one must be of Mauritanian nationality to hold trade union office or, for foreign workers, must have exercised the profession which the trade union represents in Mauritania for five consecutive years. According to the Government, this text is preferable to section 7 currently in force since it only restricts access to trade union office on the requirement that the workers have exercised the profession before being elected. The Government considers that it is in the workers' interest to have as trade union leaders persons who have an in-depth knowledge of the problems which concern them. The Committee takes note of this information and expresses the hope that the Labour Code will be amended on this point in the near future.

2. *Right of organizations to organize their activities and to formulate their programmes freely in order to promote and defend the interests of their members.* While recalling that its previous comments concerned the prohibition of strike in the case of compulsory arbitration (sections 39, 40, 45 and 48 of Book IV of the Labour Code currently in force), the Committee notes that the draft Code which would lift these restrictions has not yet been adopted. The Government indicates in its report that the draft Code has been discussed in the National Council for Labour and Social Security and that it is presently with an inter-ministerial committee before being submitted to the Council of Ministers. The Committee takes note of the Government's statement that the right of workers' organizations to have recourse to strike action in the defence of the social, economic and occupational interests of their members will be ensured. The Committee expresses the hope that the draft Labour Code will limit the prohibition of strikes only to situations where the Committee has considered it acceptable, that is in essential services in the strict sense of the term (those services the interruption of which would endanger the life, safety or health of whole or part of the population) or in the case of acute national crisis. The Committee requests the Government to provide a copy of the new Labour Code which it hopes will be adopted shortly.

Mexico (ratification: 1950)

The Committee notes the Government's report and the statement made by the Government representative before the Conference Committee on the Application of Standards in June 1995, and the discussion which took place thereafter. It also notes the conclusions of the Committee on Freedom of Association in Case No. 1844 (see 300th and 302nd Reports, paragraphs 215 to 244 and paragraph 66, approved by the Governing Body at its sessions in November 1995 and March 1996).

1. *Trade union monopoly imposed by the Federal Act on State Employees and the Constitution*

The Committee notes that for many years its comments have referred to the following provisions of the Federal Act on State Employees and the Constitution: (i) the prohibition of the coexistence of two or more unions in the same State body (sections 68, 71, 72 and 73); (ii) the prohibition of a trade unionist from leaving the union to which she or he belongs (section 69); (iii) the prohibition of the re-election of trade union officers (section 75); (iv) the prohibition of unions of public servants from joining trade union organizations of workers or rural workers (section 79); (v) the extension of the restrictions applicable to trade unions in general to the single Federation of Unions of Workers in the Service of the State (section 84); and (vi) the imposition in the law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act issued under article 123(B)(XIII bis) of the Constitution).

The Committee notes with interest that the Supreme Court of Justice has issued two rulings related to the legislation governing public servants in two states (Jalisco and Oaxaca), which refer to three basic workers' rights that must be respected: of becoming a member of an existing trade union or associating for the establishment of a new one; of not becoming a member or being affiliated to any trade unions; and of giving up membership of a trade union. The Supreme Court rulings emphasize that at no time did the legislators who formulated the Constitution envisage a trade union monopoly and that secondary legislation cannot therefore restrict the freedom of association by establishing that in state bodies and agencies there cannot be more than one union. Furthermore, the Committee notes that the Supreme Court approved the case-law principle establishing that the employment relationships between decentralized agencies and their employees must be governed by article 123(A) of the Political Constitution of the United States of Mexico and the Federal Labour Act.

In this respect, even though the above rulings and case law of the Supreme Court go in the same direction as the requirements of the Convention, the Committee is bound to regret that, despite the time that has elapsed since the ratification of the Convention in 1950 and the first comments made by the Committee, the Government has provided no new information concerning the practical measures adopted to bring its legislation into conformity with the provisions of the Convention and the principles of freedom of association.

In these conditions, the Committee urges the Government to take the necessary measures to repeal or amend the above provisions of the Federal Act on State Employees and the Constitution in order to bring the national legislation into conformity with the Convention and guarantee workers in the service of the State the right to establish organizations of their own choosing including, if they so wish, those outside the existing structure in accordance with Article 2 of the Convention.

2. *Right of workers to elect their representatives in full freedom*

The Committee regrets to note that the Government has not provided comments on the provision that was criticized in a direct request concerning the prohibition placed upon foreigners from being members of trade union executive bodies (section 372 (II) of the Federal Labour Act).

In these conditions, the Committee recalls that provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom and therefore requests the Government to take measures to allow foreign workers to take up trade union office, at least after a reasonable period of residence in the country, or where reciprocity conditions exist, at least for a certain proportion of trade union leaders (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118).

The Committee requests the Government to inform it in its next report of any developments with regard to all of the questions raised.

Myanmar (ratification: 1955)

The Committee notes the statement made by the Government representative to the Conference Committee in 1996, as well as the discussion which took place therein. It must, however, once again express its profound regret that it has not received a report from the Government, requested as a result of the Conference Committee's conclusions, and that the Government representative's statement to the Conference Committee only repeated what had been said over previous years concerning its intention to apply the Convention without being able to indicate that any specific positive developments had occurred in law or practice. Furthermore, while noting the Government representative's indication to the Conference Committee that the ILO had been formally requested to provide technical assistance in drafting the trade union law and was welcome to visit the country at a mutually convenient date so that its input could be incorporated into the new legislation, the Committee notes with deep regret that the mission which had been scheduled in May 1996 could not be received.

In these circumstances, the Committee must once again recall that it has been commenting upon the serious incompatibilities between the national law and practice and the Convention for 40 years now. It has been urging the Government, in particular, to take the necessary measures to ensure the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organization concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of any first-level union, federation or confederation to affiliate with international organizations *(Articles 2, 5 and 6 of the Convention)*. As no concrete developments have been communicated to the Office, the Committee must once again urge the Government to adopt, without delay, the necessary measures to ensure fully the right to organize, and the right to affiliate with international organizations, without impediment.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Namibia (ratification: 1994)

The Committee notes the detailed information supplied by the Government in its first report, as well as the entry into force on 8 April 1992 of Labour Act (No. 6 of 1992). The Committee notes with satisfaction that the provisions of this Act recognize the right of workers and employers, respectively, to establish and join trade unions and employers' organizations of their own choosing without previous authorization. The Committee further notes that this Act allows workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities including the right to take action by way of strike.

In addition, a request regarding another point is being addressed directly to the Government.

Nicaragua (ratification: 1982)

The Committee notes the Government's report and recalls that its previous comments referred to:

- guaranteeing the right of association of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops;
- abolishing the requirement of an absolute majority of the workers of an enterprise or work centre for the establishment of a trade union (section 189 of the Labour Code);
- amending the provision on the general prohibition of political activities by trade unions (section 204(b) of the Labour Code);

- amending the requirement that trade union leaders must present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36 of the Regulations on Trade Union Associations);
- allowing foreign workers to have access to trade union office (section 35 of the Regulations on Trade Union Associations);
- lifting the excessive limitations on the exercise of the right to strike, such as the requirement of a majority of 60 per cent for calling a strike, prohibiting strikes in rural occupations when products may be damaged if not immediately disposed of, and the referral of a dispute to compulsory arbitration by the authority, in services which are not essential in the strict sense of the term (sections 225, 228 and 314 of the Labour Code);
- allowing federations and confederations to exercise the right to strike.

The Committee notes the Government's indications that in practice public servants have the right to join trade unions. Similarly, the Committee notes that section 43(8) of the Civil Service and Administrative Profession Act (Act No. 70 of 16 March 1990) gives public servants the right to organize, strike and bargain collectively. In this respect, the Committee asks the Government to inform it whether Legislative Decree No. 8-90 which suspended application of Act No. 70 is still in force or whether it has been repealed.

The Committee takes due note of the following information supplied by the Government: in conformity with the Ministerial Resolution of 23 May 1990, a trade union organization may be established with a minimum of 25 workers and, in practice, an absolute majority is not required to establish a trade union in an enterprise; political activities of trade unions are not prohibited either by the Constitution or in practice; in practice, trade union leaders are not required to present to the labour authorities the registers and other documents of a trade union; foreign workers have access to trade union office; limitations on the exercise of the right to strike have been abolished in the new Labour Code; and federations and confederations established legally may exercise the right to strike.

The Committee expresses the firm hope that the Government's views expressed above are reflected in legislation and hopes that the Government will take the necessary measures so that the new Labour Code is adopted very shortly, taking into account the comments which the Committee has been making for several years.

The Committee once again asks the Government to send it the full text of the new Labour Code and to inform it in its next report of any progress made with respect to its adoption.

Niger (ratification: 1961)

The Committee notes the information supplied by the Government in its report.

Article 3 of the Convention. With reference to its previous comments on the need to amend the legislation which restricted the right to access to trade union office to Nigerian nationals (sections 6 and 25 of the 1962 Labour Code), the Committee notes with satisfaction that section 178 of the Labour Code as amended by Order No. 96-039 of 29 June 1996 extends the right to exercise trade union office to foreign workers who have resided lawfully in the territory of Niger for three years, or less for the citizens of States which have concluded reciprocal agreements on trade unions.

Nigeria (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It notes the statement made by the Government representative to the Conference Committee on the Application of Standards in June 1996, the discussion which followed and the resulting special paragraph in the Conference Committee's report.

With reference to its previous observation, the Committee notes that there has been no progress made in bringing the national legislation and practice into conformity with the Convention, despite the comments which it has been making for several years. It notes, in particular, the fact that Decrees Nos. 9 and 10 of August 1994 dissolving the executive councils of the Nigerian Labour Congress (NLC) and of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) respectively have not been repealed and that these unions are still being run by a single administrator appointed by the Government.

The Committee also notes that a number of Decrees have been adopted recently which further violate the provisions of this Convention. In this respect, the Committee notes that the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree and the Trade Disputes (Essential Services) (Proscription) Order 1996 of 21 August 1996 proscribe and prohibit the participation in any trade union activities of the Non-Academic Staff Union of Educational and Associated Institutions, the Academic Staff Union of Universities and the Senior Staff Association of Universities, Teaching Hospitals, Research Institutes and Associated Institutions and dissolve the National Executive Council and the Branch Executive Councils operating within any university in Nigeria in contravention of *Articles 2 and 4 of the Convention.*

Moreover, the Committee notes that the Government has once again restructured the previous 41 registered industrial unions into 29 trade unions affiliated to the Central Labour Organisation (named in the law as the NLC) through the promulgation of the Trade Unions (Amendment) Decree No. 4 of 5 January 1996. This Decree provides for the establishment of a determined number of trade unions for each occupational category according to a pre-established list further confirming the system of trade union monopoly. The Committee had been able to note in its previous comments that a similar restructuring by Government Notice in 1993 had been repealed, following the Committee's request to do so. Now Decree No. 4 goes even further in its restriction of the right to organize by providing under section 8 that "no question as to the validity of any act taken by any person or authority in pursuance of this Act shall be entertained by any court of law or tribunal in Nigeria". Noting further that Decree No. 4 also omits from the list of registered organizations 25 previously registered and recognized trade unions of senior staff and ten employers' associations, the Committee considers that the adoption of this Decree violates the right of workers and employers to establish and join organizations of their own choosing.

The Committee notes with deep regret the serious deterioration in the trade union situation in Nigeria. It urges the Government to take the necessary measures to bring the law and practice into conformity with the provisions of the Convention, particularly by repealing the above-mentioned Decrees, and to re-establish the right to organize and the right to elect representatives in full freedom, without interference by the public authorities, for workers' and employers' organizations.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Norway (ratification: 1949)

The Committee notes the information provided in the Government's report.

In its previous observation, the Committee had commented upon the need to remove the restrictions imposed on the right to strike in the oil industry, through the imposition of compulsory arbitration. In its latest report, the Government has indicated that the Labour Law Council is working on a proposal for a new labour disputes Act. The Government adds that, since this matter is complex, both technically and politically, the Council found it necessary to air its views among the parties concerned before it prepared a full text proposal. The Council therefore presented a report on the principles for a new Act on 21 June 1996. This report will be sent on a broad hearing so that all organizations concerned will have the opportunity to comment on the proposals. The Labour Law Council will then take the comments into consideration and prepare a proposal for a new labour disputes Act and the Government will decide on the proposals to be put forward in a Bill to the legislature.

The Committee notes this information and trusts that the Bill to be proposed will be in full conformity with the principles concerning the right to strike and will remove any restrictions imposed on this right through the use of compulsory arbitration. In this respect, the Committee notes from the Government's report that arbitration was not imposed in any of the disputes occurring this year. It requests the Government to keep it informed of any developments in the drafting and adoption of a new labour disputes Act.

Pakistan (ratification: 1951)

The Committee notes the information provided by the Government in its report, as well as the detailed information supplied by the Government representative to the Conference Committee in June 1995. The Committee further notes the comments made by the Pakistan Railway Employees Union (PREM).

I. The Committee's previous observations referred to discrepancies between national legislation and the Convention on the following points:

- ban on trade union membership and activities for employees of the Pakistan Television Corporation and the Pakistan Broadcasting Corporation;
- denial of the rights guaranteed by the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980 and section 4 of the Export Processing Zone (Control of Employment) Rules, 1982);
- exclusion of public servants of Grade 16 and above from the scope of the Industrial Relations Ordinance (IRO), 1969 (section 2(viii) (special provision)); restrictions on recourse to strikes (sections 32(2) and 33(1) of the Ordinance);
- prohibition on minority unions from representing their members in relation to individual grievances;
- artificial promotions used as an anti-union tactic in the banking and finance sector;
- denial of the right to form trade unions for employees in public and private sector hospitals.

1. As regards Pakistan Television and Broadcasting Corporations (PTVC and PBC), the Committee notes from the information supplied by the Government to the Conference

Committee that the recommendation of the tripartite Task Force on Labour to allow the restoration of trade union rights to employees of the PTVC and the PBC is under active consideration by the Cabinet. The Committee therefore expresses the hope that trade union rights will be restored to the above employees and requests the Government to inform it of the Cabinet decision on this matter in its next report.

2. As regards the granting of trade union rights in export processing zones (EPZs), the Government once again refers to the Export Processing Zones Authority (Control of Employment) Rules, 1982, which regulate conditions of employment in EPZs and provide benefits which are better than those provided to other workers. The Government reiterates that, at present, only one EPZ has been established which employs fewer than 6,000 workers, 80 per cent of which are women. Moreover, since the cultural climate in Pakistan is not in favour of unionization of female workers due to social taboos, those workers do not demand that trade union rights under the IRO be restored to them. There is, however, no ban on their forming any association. The Government adds that the earlier recommendation of the tripartite Task Force to the effect that it would be desirable to apply labour laws uniformly without discrimination to all organizations is being actively considered by the Cabinet Committee. The Committee expresses the firm hope that trade union rights under the IRO will be restored to workers in EPZs and requests the Government to inform it of the Cabinet Committee's decision in this regard in its next report.

3. Regarding the exclusion of civil servants of Grade 16 and above from the scope of the Industrial Relations Ordinance, the Government reiterates that there is no bar on the formation of associations of different categories of employees. However, they are subject to certain restrictions to avoid the carrying out of activities that are harmful to the basic aims and objectives of their establishments, such as the engagement in political activities, the issuance of periodical publications or publishing representations of their members without prior government approval. The Committee had already noted these same restrictions in the Sindh Government Servants (Conduct) Rules in its previous comments. It would once again recall that such restrictions are incompatible with the right of workers' organizations to elect their representatives in full freedom and to organize their administration and activities without government interference in accordance with *Article 3 of the Convention*. Furthermore, the Committee would draw the Government's attention to paragraph 86 of its General Survey of 1994 on freedom of association and collective bargaining wherein it indicates that provisions stipulating that different organizations must be established for each category of public servants (for example, where trade union membership is reserved to public servants in the same unit) are incompatible with the right of workers to establish and join organizations of their own choosing. The Committee has, however, considered it admissible for first-level organizations of public servants to be limited to that category of workers provided that their organizations are not also restricted to employees of any particular ministry, department or service, and that they may freely join federations or confederations of their own choosing, like organizations of workers in the private sector.

As the Government has still not supplied the requested information relating to the size and activities of the existing associations of civil servants, the Committee once again requests the Government to supply this information with its next report.

4. With respect to restrictions on the right to strike, the Government reiterates that the Pakistan Essential Services (Maintenance) Act of 1952 is only applied to employment organizations which meet defence needs or concern the life of the community. The main concern is to ensure the economic viability of national priority programmes and it is,

therefore, in the national interest to ensure that industrial action does not continue for an indefinite period.

The Committee notes the Government representative's statement to the Conference Committee that the existing list of establishments under the Act have been reduced from 16 to eight, and that the list would be regularly re-examined. Furthermore, the Committee notes that the tripartite Task Force recommended the withdrawal of application of the Pakistan Essential Services (Maintenance) Act, 1952 to certain other establishments currently covered by the Act and that its recommendations were submitted to the Cabinet for approval. The Committee requests the Government to inform it of the Cabinet decision on this matter in its next report.

5. As regards the right of representation of minority unions, the Government reiterates that it has taken note of the Committee's previous comments and is taking all possible measures in consonance with the Convention to protect the rights of minority unions accordingly.

6. With regard to the Committee's previous comments on artificial promotions in the banking and financial sector, as well as in the steel industry, designed to undermine the membership of workers' unions, the Government indicates that if in effect false promotions occurred whereby the employees received higher wages but no corresponding change of task to a supervisory role, these employees could resort to the unfair labour practice provisions of section 22(A)(8)(g) of the IRO, and eventually proceed to the labour court for redress. In this respect, the Committee recalls that section 2(xxviii) of the IRO excludes from the definition of "worker" any person "who, being employed in a supervisory capacity, draws wages exceeding 800 rupees per mensum". As the report of the direct contacts mission to Pakistan indicates that the minimum wage is 1,500 rupees, the definition of "worker" is meaningless. The Committee would once again draw the Government's attention to paragraph 66 of its General Survey wherein it has considered that legislation which allows for the granting of fictitious promotions to unionized workers without actually according them management responsibilities, thereby effectively placing them in the category of so-called "employers" to whom the right to organize is not permitted, is not in accordance with the Convention, since the end result is to deny the right of association and artificially reduce the size of the bargaining unit. It therefore requests the Government to amend the definition of "worker" so as to prevent the undermining of workers' organizations through artificial promotions and to grant all workers, without distinction whatsoever, the right to establish and join organizations of their own choosing. In this respect, the Committee notes with interest from the information provided by the Government to the Conference Committee, that the tripartite Task Force on Labour has considered broadening the definition of "workman" in order to solve the problem. The Committee requests the Government to inform it, in its next report, of the Task Force's recommendations in this regard to the Cabinet Committee.

7. Regarding the denial of the right to form trade unions for employees in public and private sector hospitals, the Government reiterates that the application of the Essential Services Act to these workers does not deprive them of the right to organize. Hence, they have the legal right to form associations. In addition, and according to the statement of the Government representative to the Conference Committee, although government hospital employees are not covered by the IRO, employees of private hospitals and clinics could form their own unions under the IRO. The Committee would note however that all hospital employees are excluded from the IRO under section 1(3)(f), which does not make a distinction between public and private sector hospitals. It therefore once again requests the Government to supply information on the legislative

provisions actually in force which ensure hospital employees the right to establish and join organizations of hospital employees for furthering and defending their professional interests, as provided for in the Convention, and to indicate the size and activities of the associations in this sector.

II. The Committee notes with regret that the Government has not provided its observations to the Committee's previous comments on the denial of the right to organize of forestry workers. It must therefore recall its previous comments thereon which were as follows:

The Committee notes the recommendations made by the Committee on Freedom of Association in Case No. 1696 (see 292nd Report of the Committee) concerning the refusal to register a union of forestry workers because they were not covered by the definition of the term "worker" in the Industrial Relations Ordinance of 1969 as they were considered to be civil servants. As recalled above, the right to establish and join an organization of one's own choosing applies to all workers "without distinction whatsoever" and therefore also applies to employees of the State. It therefore requests the Government to indicate the measures taken or envisaged to ensure that employees of the State in general and forestry workers in particular are granted the right to establish and join organizations of their own choosing.

III. The Committee notes with concern that the most recent comments made by the Pakistan Railway Employees' Union (PREM) concern a notification dated 12 September 1996 from the Railway Board debarring some more employees from the purview of the IRO and warning them of disciplinary action in the event that they resort to trade union activities. In previous comments, the Committee had noted that a ministerial circular which classified most railway lines as Ministry of Defence Lines and banned railway employees from taking part in any trade union activities had been the subject of a complaint examined by the Committee on Freedom of Association in November 1994 (295th Report) and that the Government had, at that time, indicated that the circular in question had been challenged before the Lahore High Court. The Government states that the Court dismissed PREM's petition on the basis of the sensitive position of Defence Lines. The Committee recalls that *Article 2* of this Convention provides that the right to establish and join an organization of one's own choosing applies to all workers "without distinction whatsoever" and notes that the preliminary report of the tripartite Task Force on Labour recommends that this circular be withdrawn to enable railway workers to exercise their right of unionization without any restrictions or conditions. The Committee trusts that the Government will take the necessary measures to ensure that all workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing and requests the Government to indicate in its next report the progress made in restoring this right to railway workers.

IV. The Committee hopes that the Government will continue to take advantage of the technical assistance of the ILO in order to bring, at an early date, its legislation into conformity with the requirements of the Convention, in particular, as regards the right of all workers — including employees of the PTVC and the PBC, workers in export processing zones, public servants, hospital workers, railway employees and forestry workers — to establish and join organization of their own choosing without previous authorization, and as regards the right to strike. It asks the Government to report in detail on any progress made in this regard.

More generally, the Committee regrets to note that despite the undertaking of a direct contacts mission between a representative of the Director-General and the Government in January 1994, as well as the establishment of a tripartite Task Force on Labour which drew up recommendations very similar to those of the mission on amendments to be made to the legislation, the Government has still not taken the appropriate steps to give effect to the above-mentioned recommendations. The Committee therefore urges the Government to ensure that substantial progress is made in amending national legislation and practice concerning the issues raised by the Committee in the very near future.

While the Committee was sitting, it received the Government's report which it will examine at its next meeting.

Panama (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which referred to:

- the exclusion of public servants from the scope of the Labour Code and consequently from the right to organize (section 2(2) of the Labour Code);
- the requirement, under section 344 of the Code, of too high a number of members in order to establish an occupational organization (50 workers and ten employers).

While noting that section 46 of Act No. 44 amends section 369 of the Code by abolishing the requirement that members of the executive board of a trade union must be of Panamanian nationality, the Committee expressed the hope that this requirement would also be removed from the Constitution (Article 64).

Moreover, the Committee noted with interest that under section 41 of the above-mentioned Act No. 44, section 344 of the Labour Code is amended, reducing from 50 to 40 the minimum number of workers needed to establish an occupational organization. The Committee observed, nevertheless, that the too-high number of ten employers needed to establish an occupational organization had not been modified and hoped that the Government, in consultation with the social partners, would be able to reduce this requirement also and would continue to reduce still further the minimum number of workers in order to establish a trade union on the enterprise level.

With reference to the exclusion of public servants from the scope of the Labour Code and consequently from the right to organize (section 2(2) of the Labour Code), the Committee noted with interest that section 174 of Act No. 9 ("establishing and regulating administrative careers"), adopted on 20 June 1994 provides for the right to organize of public servants by establishing that "public servants engaged in administrative careers may establish or join associations of public servants of a social, cultural and economic nature, of their respective institutions, which have the aim of promoting the studies, training, improvement and protection of their members ...". The Committee duly noted that Act No. 9 lays down the right of public servants to strike in conformity with the law as well as the right to collective bargaining.

Nevertheless, the Committee observed that section 174 of Act No. 9 lays down that there shall not be more than one association in an institution and that the last paragraph of section 178 stipulates that the associations may have provincial or regional chapters but not more than one chapter per province.

In this respect, the Committee pointed out that any system of trade union unity or monopoly imposed directly or indirectly by the law runs counter to the principle of free establishment of organizations of workers and employers set forth in Article 2 of the Convention. The Committee reminded the Government that although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, voluntary groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, or to coordinate their efforts to tackle ad hoc difficulties which affect all their organizations (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91).

The Committee again expresses the hope that the Government will continue to make every effort to bring the legislation into full conformity with the Convention and requests it to keep it informed on any progress made in this regard.

The Committee is also addressing a direct request on certain points to the Government.

Paraguay (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that, in substance, its previous comments referred to:
>
> — the exclusion from the scope of the new Labour Code, 1993, of public servants, be they from the Central Administration or from Decentralized Units (section 2);
>
> — the requirement of 300 workers as the minimum number to form a trade union (section 292 of the new Code);
>
> — the requirement of being an active worker in the enterprise and an active member of the trade union in order to be eligible for trade union office (sections 298(a) and 293(d) of the new Code, respectively);
>
> — the restriction on the free election of trade union representatives (Decree No. 16769 which contains detailed and meticulous regulation of the trade union electoral process);
>
> — the referral of collective disputes to compulsory arbitration and the dismissal of workers who have stopped work before the conciliation and compulsory arbitration procedures have been exhausted (sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure).
>
> The Commission notes with interest that according to the information provided by the Government, Decree No. 16769 which restricts free election of trade union representatives was declared unconstitutional by the Supreme Court of Justice, and is therefore null and void. The Committee requests the Government to inform it on the adoption of any derogating text.
>
> On the exclusion of public servants from the scope of the new Labour Code of 1993, the Committee duly notes that, according to the information supplied by the Government, the new Act for public servants is before the Parliament and that the Committee's comments on the right to organize of workers in public services have been taken into account. In regard to Act No. 200 which lays down the status of public officials, particularly in regard to sections 31 and 36 (which are contrary to the Convention), the Commission notes with interest the information from the Government that although the Act is still in force, its provisions are contrary to the national Constitution (articles 96 and 98) and that, consequently, they are null and void and without legal force.
>
> The Committee hopes that in preparing the Act for public servants the provisions of the Convention have been taken into account and that the Act will repeal Act No. 200, particularly sections 31 and 36, in order to bring the law into full conformity with the practice and the requirements of the Convention.
>
> Although the Committee has noted with interest that article 97 of the new Constitution stipulates that arbitration is optional, it requests the Government once again to inform it whether sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure (on compulsory arbitration and dismissal of workers who have stopped work during the process) have been repealed, so that effect is given to the voluntary nature of arbitration.

With regard to the requirement that a minimum number of 300 workers is needed to form a trade union (section 292 of the new Code) and the requirement to be an active worker in the enterprise and an active member of the trade union in order to take up trade union office (sections 298(a) and 293(d) of the new Code, respectively), the Committee requests the Government once again to take measures, in consultation with its social partners, to amend legislation for the purpose of reducing the minimum number of workers needed to establish a trade union and to allow workers to elect their representatives in full freedom.

The Committee requests the Government to inform it in its next report of the measures adopted to bring legislation into conformity with the requirements of the Convention and also on the progress in approving the special Act for public servants and to send a copy of the new Act once it is adopted.

The Committee is also sending a request directly to the Government on various points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1960)

The Committee notes the Government's report and the comments made by the Federation of Workers of "Luz y Fuerta" on the application of the Convention, and recalls that its previous comments referred to the following:

- denial of trade union membership during the work probation period (section 12(c));
- the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation, or for various occupations (section 14);
- the requirement that, in order to be eligible for trade union office (section 24), workers must be active members of the union (section 24(b)) and must have been in the service of the enterprise for at least one year (section 24(c));
- the ban placed on trade unions from engaging in political activities (section 11(a));
- the excessive restrictions on the right to strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);
- the obligation placed upon trade unions to compile the reports which may be requested from them by the labour authorities (section 10(f));
- the power of the labour authority to cancel the registration of a union (section 20 of the Act), and the requirement that the union must wait six months after the cause of the cancellation has been remedied before re-applying for registration (section 24 of the Regulations); and
- the prohibition placed on public servants' federations and confederations from affiliating with organizations that represent other categories of workers (section 19 of Presidential Decree No. 003-82-PCM).

The Committee observes that the Government refers to the information in its previous report and provides no new information on the matters raised. It must therefore repeat its previous comments.

The Committee took note of the Government's comments concerning the ban on trade unions from engaging in issues of party politics (section 11(a)) to the effect that trade unions are under no prohibition from expressing their points of view as regards the social and economic policy of the Government and that, with respect to section 20, the definitive cancellation of the registration of a trade union is only possible by a decision of the judicial authority. The Committee requests once again the Government to supply information on the manner in which these provisions are applied in practice.

The Committee expresses the firm hope that the Government will shortly adopt the necessary measures to ensure that the legislation: enables workers to join organizations of their choosing during the probationary period; reduces the minimum number of workers required to form trade unions by branch of activity, occupation or for various occupations; enables workers to elect their leaders in full freedom; abolishes the obligation placed upon trade unions to compile the reports which may be requested from them by the labour authorities; abolishes restrictions on the exercise of the right to strike (particularly with regard to compulsory arbitration in the transport sector); lifts the prohibition placed on first-level federations of public servants from affiliating with confederations of their own choosing.

The Committee again requests the Government to supply information on the measures adopted in this respect in its next report.

Furthermore, the Committee is addressing a request directly to the Government.

Philippines (ratification: 1953)

The Committee notes the information provided by the Government in its report.

1. The Committee observes that amendments have been proposed in Senate Bill No. 1757 to section 263 of the Labor Code which restricts the right to strike in non-essential services by imposing compulsory arbitration when, in the opinion of the Secretary of Labor and Employment, a planned or current strike affects an industry indispensable to national interest. Senate Bill No. 1757 limits this power of the Labor Secretary to disputes affecting industries performing essential services. The Government adds that Senate Bill No. 1757, as well as the new Civil Service Code, which would grant government workers the right to strike in certain circumstances, are both pending before the legislature. The Committee takes due note of this information and requests the Government to keep it informed of any progress made in the adoption of the above Bill.

2. The Committee notes from the Government's report that the amendments proposed in Bill No. 1757 would allow the President to intervene in strikes without any limitation. The Committee recalls that the power of the President to intervene should be limited to situations of acute national crisis, or to disputes in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee would therefore request the Government to take steps to ensure that the amendments proposed in Bill No. 1757 restrict the power of the President to intervene in strikes to the two possible situations mentioned above.

3. Finally, the Committee notes from the Government's report that no changes have been made to the provisions of the Labor Code imposing penalties for participation in illegal strikes: the dismissal of trade union officers (section 264(a)); penal liability to a maximum prison sentence of three years (section 272(a)); and imprisonment for the organizers or leaders of strikes and for participants in pickets deemed for propaganda purposes against the Government (section 146 of the revised Penal Code).

The Committee would remind the Government that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Furthermore, it recalls that sanctions for strike action should be proportionate to the offences committed. The Committee therefore requests the Government to take steps to ensure that sections 264(a) and 272(a) of the Labor Code, as well as section 146 of the revised Penal Code, are amended in line with the principles enunciated above. It asks the Government to keep it informed of any developments in this regard.

A request regarding certain points is being addressed directly to the Government.

Poland (ratification: 1957)

The Committee notes the Government's report and the follow-up given to the recommendations of the Committee on Freedom of Association in Case No. 1785 (see 305th Report of the Committee on Freedom of Association, paragraphs 57 to 59), approved by the Governing Body in November 1996.

The Committee notes that the Committee on Freedom of Association refers to the amendments which entered into force on 4 August 1996, to the Act of 25 October 1990 concerning restitution of trade union assets. The Act will allow the Government to institute a procedure for transfer of assets under which the assets of the former Central Council of Trade Unions will be shared equally between NSZZ Solidarnosc and the All-Poland Trade Union Alliance (OPZZ). The draft agreement for distribution of assets between the two bodies has not been concluded and the Minister of Labour must, under the new law, draw up a list of assets and determine by Order, in consultation with the two unions, which shall be the exclusive property of each. The Order should be issued before 30 June 1997.

The Committee notes this information and expresses once again the hope that the Government and the trade unions concerned will continue to seek an equitable solution through negotiation and consultation, so that the trade unions may exercise their activities effectively, in full independence and on an equal footing.

The Committee requests the Government to send it a copy of the text of the Order as soon as it is issued.

The Committee is addressing a direct request to the Government on certain other points.

Portugal (ratification: 1977)

The Committee notes the Government's report and recalls that its comments referred to the need to bring the following provisions of the national legislation into conformity with the Convention and national practice, since they require too high a number of workers and employers in order to form professional organizations:

- section 8(2) and (3) of Legislative Decree No. 215/B/75, which requires 10 per cent or 2,000 workers to establish a trade union, and one-third of the trade unions of a region or category (respectively) to establish a federation; and
- section 7(2) and (3) of Legislative Decree No. 215/C/75, which requires one quarter of the employers concerned but not more than 20 employers in order to establish an employers' organization and a minimum of 30 per cent of employers' associations to establish a group or federation (respectiveiy).

The Committee observes that the Government reiterates that, in practice, these provisions cannot be applied as they are incompatible with the Constitution and that they will be abolished when the legislation on labour relations is revised.

The Committee hopes that the above provisions will be amended in the near future and asks the Government to inform it of any positive changes in this respect.

Romania (ratification: 1957)

The Committee notes the information contained in the Government's report to the effect that it is awaiting proposals from the most representative workers' and employers' organizations with a view to amending Acts Nos. 15/1994 on the settlement of collective labour disputes and 54/1991 on trade unions. The Committee has also noted the report of the Committee on Freedom of Association in relation to Case No. 1788 (see 297th Report of the Committee on Freedom of Association), approved by the Governing Body at its March-April 1995 session.

Article 3 of the Convention. The Committee recalls once again that its previous comments referred to the need to amend or repeal the following provisions of Acts Nos. 15 and 54 concerning, respectively, the settlement of collective labour disputes and trade unions, in order to bring the legislation into full conformity with the Convention:

- sections 38 and 43 of Act No. 15 establishing a compulsory arbitration procedure which may be set in motion at the sole initiative of the Minister of Labour when a strike has lasted for more than 20 days and its continuation "is likely to affect the interests of the general economy";
- section 30 of Act No. 15 which provides that the Supreme Court of Justice may suspend the start or continuation of a strike for a period of 90 days if it deems that major interests of the economy may be affected;
- section 47 of Act No. 15 which provides for heavy penalties (up to six months' imprisonment) if a strike is called in disregard of section 45(4) and others of the Act;
- section 13 of Act No. 15 which prohibits persons who have declared a strike without respecting the terms laid down by the Act from being elected as trade union delegates;
- sections 32(3) and 36(3) of Act No. 15 which establish the financial liability of strike organizers if the conditions for starting or pursuing the strike have not been met;
- section 13(3) of Act No. 15 under which delegates of the workers can only be elected from among workers with three years' seniority in the unit, or if the unit has been in operation for less than three years, workers who have been in it since its foundation;
- section 9 of Act No. 54 which provides that only Romanian citizens employed in the production unit may be elected to trade union office.

The Committee once again expresses the hope that the Government will take the necessary measures, in concertation with the social partners, to bring its legislation into full conformity with the Convention. The Committee asks the Government to keep it informed of any developments in this respects and reminds it that the ILO is at its disposal for technical assistance.

Furthermore, the Committee notes with interest the adoption of the Bill on the conclusion, execution, suspension and termination of an individual labour contract repealing Act No. 1/1970 on labour organization and discipline in state socialist units which has been the subject of comments for many years and requests the Government to send it a copy of the text.

Rwanda (ratification: 1988)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Prohibition of the right to strike in the public service.* The Committee recalls that whereas it has always acknowledged that the right to strike may be limited or even prohibited in the public service, such a prohibition would be nonsensical if legislation adopted a too broad definition of the concept of public service. The Committee cannot disregard the

> peculiarities or legal and social traditions of each country but it must nevertheless attempt to identify relatively uniform criteria permitting examination of the compatibility of a legislation with the principles of freedom of association. In these circumstances, the prohibition of the right to strike should not be imposed on public servants who are not exercising authority in the name of the State (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 158).
>
> The Committee therefore requests the Government to indicate the measures which have been taken, or are envisaged, to amend section 26 of the Legislative Decree of 19 March 1974 to issue the general conditions of service of employees of the State (which, under its present wording, continues to forbid state employees to take part in strikes or in activities aimed at causing a strike in the state services) with a view to limiting the restrictions on the right to strike to those which accord with the principles of freedom of association.
>
> 2. *Hindrance with respect to the election of trade union representatives.* The Committee recalls that under *Article 3 of the Convention* workers' and employers' organizations shall have the right to elect their representatives in full freedom.
>
> The Committee therefore requests the Government to indicate the measures which have been taken or are envisaged to amend section 8 of the Labour Code which prohibits election of non-Rwandans to trade union office, in order to permit foreign workers to hold trade union office at least after a reasonable period of residence in the country (see paragraph 118 of the General Survey).
>
> The Committee reminds the Government that the ILO is at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention and hopes that the Government will make every effort to take the necessary action in the very near future. It requests the Government to communicate in its next report information on any progress made in these fields.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the fifth year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comment which read as follows:

> With reference to its previous comments on the need to amend sections 18(7) and 19 B(2) of the Trade Unions and Trade Disputes Ordinance of 1959 which confer discretionary power on the Registrar to inspect trade union accounts, by restricting their application to cases of presumed infringements coming to light from the presentation of annual financial reports or to cases of complaints by members of the union, the Committee notes the Government's report which states that it plans to review its labour legislation, with the assistance of the ILO, in order to harmonize it with ratified Conventions. It asks the Government to indicate in its next report the measures that it has taken to bring the legislation into conformity with *Article 3 of the Convention* and national practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Senegal (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that its previous comments concerned the need to amend the national legislation in order to:

- guarantee that trade union organizations are not subject to dissolution by administrative means (Act No. 65-40 of 22 May 1965);
- allow foreign workers to hold trade union office (section 7 of the Labour Code);
- restrict the powers of the authorities to impose compulsory arbitration to bring an end to a strike (sections 238-245 of the Labour Code) to essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's statement in its report that it will take all necessary steps to complete the reforms currently under way to bring laws and regulations into conformity with the relevant international standards and that it will seek the technical assistance of the ILO if this proves essential.

The Committee again asks the Government to indicate in its next report the measures taken to bring its legislation into conformity with the Convention, and to provide the texts of any amendments to laws or regulations that have been adopted in this connection.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Slovakia (ratification: 1993)

The Committee notes the information supplied by the Government in its report.

The Committee notes with satisfaction that the 1992 Constitution permits trade union pluralism on an independent basis and enshrines the right of workers to strike in the defence of their interests.

It is sending a direct request to the Government on certain points.

Spain (ratification: 1977)

The Committee notes the Government's report and the comments by the Trade Union Confederation of Workers' Commissions (CC.OO.).

In its previous observations, the Committee expressed and reiterated the hope that the Bill concerning strikes and collective disputes would fully respect the principles of freedom of association with regard to strikes and, in particular, minimum services.

In this connection, the Committee notes that, according to the Government, the above-mentioned Bill has been sent to Parliament. Furthermore, the Committee notes with interest the "Agreement on the Extrajudicial Settlement of Labour Disputes (ASEC)" concluded on 25 January 1996 by two workers' confederations (UGT and CC.OO.) and two employers' confederations (CEOE and CEPYME), whose purpose is to create and develop a system for the settlement of collective labour disputes between workers and employers or their respective organizations.

The Committee asks the Government to inform it of any amendments to the legislation in this connection.

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report as well as the statement made by the Government representative to the 1996 Conference Committee and the discussion which took place therein. The Committee also notes with interest that, at the request of the Government, an ILO direct contacts mission took place in the country from 30 September to 4 October 1996.

The Committee notes that a new Industrial Relations Act was adopted in 1996. While noting with interest that the teaching sector has been deleted from the list of essential services where strikes could be prohibited, as had been requested in previous comments, the Committee notes that this Act perpetuates most of the previous discrepancies between the legislation and the provisions of the Convention. Moreover, it points out that the 1996 Act contains new provisions which contravene even further some of the provisions of the Convention. In particular, the Committee would refer to section 40(3) of the Act which prohibits a federation or any of its officers from causing or inciting the cessation or slow-down of work or economic activity upon punishment of imprisonment contrary to *Articles 3 and 6 of the Convention* and the principle of the right to strike.

The Committee would also point out that the following discrepancies between the legislation and the provisions of the Convention have not been rectified in the new Act:

Article 2 of the Convention

- Non-recognition of the right of association of prison staff (section 91(c) of the Act);
- obligation upon workers to organize within the context of the industry in which they exercise their activity (section 27 of the Act);
- power of the Labour Commissioner to refuse to register a trade union if he or she is satisfied that an already registered organization is sufficiently representative (section 30(5) of the Act).

Article 3

- Limitation of the activities of federations to that of providing advice and services (section 40 of the Act);
- prohibition of the right to strike in the broadcasting sector (section 73(6) of the Act);
- power of the Minister to apply to the court to enjoin any strike or lockout if he or she considers that the "national interest" is threatened; and
- important restrictions of the rights of organizations to hold meetings and peaceful demonstrations (section 12 of the 1973 Decree on Meetings and Demonstrations).

Furthermore, the Committee notes that the new Act contains the following additional restrictions on the rights provided under this Article of the Convention:

- the prohibition of picketing directed at an establishment or undertaking not directly involved in a dispute (section 87(1)(e) of the Act);
- strike ballots conducted by the Commissioner of Labour and the requirement that a majority of the employees concerned approve such action (section 66(1)(b)) (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 170: the Committee considered that account should be taken only of the votes cast);
- penal sanctions have been introduced with respect to various "unlawful" forms of industrial action under sections 69(2), 72(3), 73(3-5), 74 and 87(3), including with respect to restrictions which are in violation of the principle of the right to strike;
- the power of the court to limit the non-occupational activities or wind up an organization or federation which has devoted more funds and more of the time of its officers to campaigning on issues of public policy or public administration than to protecting the rights and advancing the interests of its members (section 42(2));
- the power of the court to cancel or suspend registration of any organization taking strike action which is not in conformity with the Act, even for simple procedural violations (section 69(1)(b)).

The Committee cannot but regret that the Industrial Relations Act of 1996, taken as a whole, has actually diminished the protection to be afforded to workers' organizations under the Convention, despite the comments it has been making for over a decade. The Committee requests the Government to take the measures necessary to amend the Act in the very near future so as to bring it into full conformity with the provisions of the Convention and would point out that the technical assistance of the ILO is available in this respect.

[The Government is asked to provide full particulars to the Conference at its 85th Session.]

Switzerland (ratification: 1975)

The Committee notes the information supplied by the Government in its report on the application of the Convention.

1. *The ban on strikes by public employees.* With reference to its previous comments on the need to amend the national legislation (section 23 (1) of the Federal Act of 30 June 1927, banning strikes by public servants), in order to ensure that public employees other than those exercising authority in the name of the State, and their organizations, have the right to strike as a means of defending their economic, social and occupational interests, the Committee notes that the Government again indicates in its report that the Declaration concerning the total revision of the 1927 Act has not yet been adopted. It none the less adds that a parliamentary committee has conducted a detailed analysis of the question of the right to strike in Switzerland, which was published in its report of 17 November 1995 concerning the parliamentary initiative on the ratification of the European Social Charter. The report refers to a ruling of 23 March 1995 by the Supreme Court on the right to strike in the public service, which expressly confirms the theory that the effect of a strike is the suspension rather than the outright termination of a contract. Lastly, the Government indicates that article 22 of the draft reform of the Federal Constitution is in keeping with this theory in that it recognizes the right to strike and to lockout, and authorizes the law-makers to "establish the procedures for them" and "ban strikes by certain categories of public employees".

The Committee can only express once again the firm hope that the total revision of the Federal Act on the conditions of service of the public service will take account of the principles of freedom of association and, in particular, that it will not deny public servants other than those who exercise authority in the name of the State the right to strike in order to defend their occupational interests if they so wish (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 158). The Committee again expresses the firm hope that the Government's next report will indicate any measures taken to bring its legislation into line with the principles of freedom of association.

2. *Penalties imposed on railwaymen for striking in 1989.* The Committee notes with interest that the penalties imposed on railwaymen in September 1989 following a demonstration of their discontent which was treated as a strike, have been quashed without further ado.

Syrian Arab Republic (ratification: 1960)

The Committee notes the information supplied by the Government in its report, as well as the information provided by the Government representative to the Conference Committee in June 1996 and the following discussions. The Government indicates that steps are being taken to amend Legislative Decree No. 84 of 1968 governing the structure of trade unions, in line with the provisions of the Convention, and to repeal section 160 of the Agricultural Labour Code No. 136 of 1958 concerning the prohibition of strikes by farmers and agricultural workers. The Government adds that it has insisted in recent communications sent to the General Federation of Peasants and the General Federation of Craftsmen that they designate their representatives to serve on the tripartite commission responsible for preparing texts to amend Act No. 21 of 1974 on peasants' associations and Legislative Decree No. 250 of 1969 on craftsmen's associations.

The Committee notes that Legislative Decree No. 84 has already been amended by Legislative Decree No. 30 of 1982, the following provisions of which are still incompatible with the Convention:

- section 4 amending section 18(A) stipulates that trade union organizations have the right to invest their assets in financial and other projects, but only under the conditions and modalities determined by the Minister. This is contrary to *Article 3, paragraphs 1 and 2 of the Convention* which provide for the right of workers' organizations to organize their administration and activities without interference from the public authorities;
- section 6 amending section 22(A) contains the requirement that each trade union's by-laws should correspond to the model established by the General Federation of Workers' Union. This obligation enacted in legislation for first-level unions to follow a model constitution and use such a model as a basis is contrary to *Article 3* which guarantees the right of workers' organizations to draw up their constitutions and rules without interference by the public authorities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 111);
- section 7 amending section 25 confers on foreign workers the right to join trade unions only on condition of reciprocity. This provision is contrary to *Article 2* which applies to *all workers, without distinction whatsoever* and therefore not subject to reciprocity on the part of another country;
- section 8 amending subsection 36(5) makes it compulsory for trade unions to allocate 20 per cent of their actual resources to the General Workers' Union. This provision is contrary to *Article 3* which guarantees the right of workers' organizations to organize their administration without interference by the public authorities; this right includes in particular the autonomy and financial independence and the protection of the assets of these organizations (see General Survey, op. cit., paragraph 124);
- several provisions of Decree No. 30 of 1982 designate the General Federation of Workers' Union as the single central trade union organization (sections 4, 6, 8, 13, 14 and 15). These references to the General Federation of Workers' Union are contrary to *Article 2* under which workers, without distinction whatsoever and without previous authorization, shall have the right to establish and join organizations of their own choosing, outside the existing trade union structure if they so wish. While *Article 2* is not intended as an expression of support for either the idea of trade union unity or trade union pluralism, pluralism should remain possible in all cases. Thus, while the General Federation of Workers' Union might have been freely constituted by the workers as stressed by the Government representative, this situation should not be formalized through the enactment of legislation.

The Committee requests the Government to take the necessary measures without delay, to amend or repeal as appropriate, the above-mentioned provisions of Legislative Decree No. 30 of 1982 so as to bring it into conformity with the requirements of the Convention.

The Committee further recalls that discrepancies remain between national legislation and the Convention on the following points:

- sections 3, 4, 5 and 7 of Legislative Decree No. 84 of 1968 which organizes the structure of trade unions on a single union basis;
- section 2 of Legislative Decree No. 250 of 1969 regarding craftsmen's associations and sections 26 to 31 of Act No. 21 of 1974 regarding peasants' cooperative associations which impose a single trade union system;
- sections 32, 35, 36(2, 3 and 4), 44(b)(4) and 49(c) of Legislative Decree No. 84 and sections 6 and 12 of Legislative Decree No. 250 of 1969 restricting the free administration and independence of trade unions;
- section 160 of the Agricultural Labour Code No. 136 of 1958 prohibiting strikes in the agricultural sector.

Although the Government states that various steps are being taken to amend or repeal the above-mentioned provisions in line with the Committee's comments, the Committee is bound to note that the Government has been giving similar assurances for many years now. Moreover, it notes with concern that Legislative Decree No. 30 of 1982, which entered into force subsequently, contains provisions that are incompatible with the Convention and have been the subject of the Committee's comments for several years. The Committee would therefore urge the Government to take the appropriate steps shortly, and recalls that the technical assistance of the ILO is at its disposal, in order to ensure that all of its legislation is brought into conformity with the Convention. It requests the Government to keep it informed in its next report of any progress made in this respect and to provide copies of provisions that have been repealed or amended as soon as they are adopted.

Togo (ratification: 1960)

The Committee notes the information contained in the Government's report.

1. *Article 2 of the Convention. Right of workers without distinction whatsoever to establish and join trade union organizations, including in export processing zones.* The Committee notes the Government's statement that the provisions of the Labour Code of 1974 apply to labour relations between employers and workers in the export processing zones established under Act No. 89-14 of September 1989. It requests the Government to provide a copy of any collective agreements covering workers in the above zones.

2. *Article 3. Right of workers' organizations to elect their representatives in full freedom.* The Committee recalls that foreign workers must be allowed to hold trade union office at least after a reasonable period of residence in the host country, and requests the Government to take the necessary measures without delay to amend section 6 of the Labour Code of 1974, which prohibits foreigners from carrying out administrative or management functions in trade unions. It requests the Government to keep it informed of any developments in this respect and to provide it with a copy of the text of the amended Labour Code.

Trinidad and Tobago (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With regard to the need to amend section 59(4)(a) of the Industrial Relations Act, so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike, as well as sections 61 and 65 of the same Act, to

ensure that any resort to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say, those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis, the Government indicated in its last report that another tripartite committee was appointed to review the whole of the Industrial Relations Act, Chapter 88:01 and that it was still deliberating.

The Committee understood from the decisions of the courts that the Ministry of Labour referred various matters to the Industrial Court under section 61(d) of the Industrial Relations Act. It appears that, over the years, the Ministry of Labour has intervened in services which are not essential services in the strict sense of the term and that acute national crisis was not at stake in any case. The Committee therefore requests the Government to provide information in its next report on the progress of the work of the committee appointed to review the Industrial Relations Act and would ask the Government to implement legislation along the lines it has been suggesting for many years.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Tunisia (ratification: 1957)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation:

> The Committee noted that the legislative amendments introduced by Act No. 94-29 of 21 February 1994 amended certain provisions of the Labour Code, in particular section 381ter which allows the Prime Minister to refer a dispute to arbitration only if it concerns an essential service in the strict sense of the term, namely a "service the interruption of which would endanger the life, personal safety or health of the whole or part of the population". Noting that the list of essential services is to be established by decree, the Committee asks the Government to provide a copy of any such decree if adopted.
>
> In addition the Committee noted that section 376bis under which strikes are unlawful unless they are approved by the central workers' union (new section 387) does not seem to have been amended. The Committee emphasizes again that this provision is liable to restrict the right of first-level unions to organize their activities *(Article 3 of the Convention)* and promote and defend the interests of the workers *(Article 10)*. The Committee again asks the Government to take the necessary steps to bring its legislation into closer conformity with the principles of freedom of association by allowing such matters to be regulated by trade union statutes, and to provide information on any developments in this respect in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1993)

The Committee notes the information provided in the Government's first report, as well as the comments made by the Confederation of Turkish Trade Unions (TURK-IS) in communications dated 18 February 1994, 4 July 1994, 8 July 1995 and 17 June 1996 and by the Confederation of Progressive Trade Unions of Turkey (DISK) in a communication dated 24 February 1995. It also takes note of the communication of the Turkish Confederation of Employer Associations (TISK) sent with the Government's report. Finally, the Committee notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1810 and 1830 (303rd Report of the Committee, approved by the Governing Body at its 265th Session (March 1996)).

The Committee notes with interest that article 52 of the Constitution which prohibited all political activity undertaken by a trade union has been repealed by Act No.

4121 of 23 July 1995 amending the Constitution. While noting that several other articles of the Constitution have been amended to ensure fuller respect for trade union rights (for example, repeal of other articles banning political activity for trade unions (articles 69, 135 and 171), and the granting of the right of trade unions of public officers to bargain collectively (article 53)), certain discrepancies as concerns *Articles 2 and 3 of the Convention* remain both in Act No. 2821 respecting trade unions, as amended by Act No. 4101 of 4 April 1995 and in Act No. 2822 of 5 May 1983 respecting collective labour agreements, strikes and lock-outs (for example: civil servants are not protected by the amended Act respecting trade unions; a wide range of political activities are still prohibited under the Act respecting trade unions (sections 37, 39, 58 and 59); and several provisions of the Act respecting collective labour agreements restrict the right to strike in contravention with the principles of freedom of association (sections 27, 29, 30, 32, 35, 48, 54 and 72 to 79)). The Committee hopes that the necessary measures will be taken in the near future to bring these Acts into full conformity with the provisions of the Convention and with the recent, important changes made to the Constitution.

Furthermore, the Committee considers that the trade union legislation in Turkey is overly detailed and regulates several matters which should be left to the competence of the constitutions and statutes of the workers' and employers' organizations themselves. It expresses the hope that the Government will take the necessary measures in the near future to simplify the legislation and leave greater autonomy to these organizations to organize their own activities and administration.

The Committee notes with interest the Government's indication to the Committee on Freedom of Association in respect of Cases Nos. 1810 and 1830 that it intends to continue amending its legislation to bring it in line with Convention No. 87 and would recall that ILO technical assistance is available in this regard if the Government so desires.

Finally, the Committee is raising a number of other points in a request addressed directly to the Government.

United Kingdom (ratification: 1949)

The Committee notes the information provided in the Government's latest report, as well as the comments made by the Trades Union Congress (TUC) in a communication dated 7 November 1996 and the Government's partial observations thereto.

1. *Dismissal of workers at the Government Communications Headquarters in Cheltenham.* In its previous comments, the Committee recalled that the staff at Government Communications Headquarters in Cheltenham (GCHQ) should be guaranteed the right to establish and to join organizations of their own choosing, in accordance with *Article 2 of the Convention*, and requested the Government to provide information in its next report on developments in this respect. In its latest report, the Government indicates that discussions with the national unions and the Government Communications Staff Federation (GCSF) have continued with a view to finding alternative arrangements which would both meet the Government's objectives with regard to national security and give staff at GCHQ access to the benefits of membership of an independent union.

The Government recalls that GCSF has been recognized formally as a trade union by the Certification Officer for Trade Unions since 1985, however, some aspects of the arrangements under which the Staff Federation had to be approved by the Director of GCHQ made it difficult for the GCSF to secure a certificate of independence. In response to representations from the GCSF, the Government considered the amendments needed to help the GCSF to secure a certificate of independence while maintaining national security interests. On 20 December 1995, the Government introduced changes to the conditions of service of staff employed at GCHQ by removing the GCHQ Director's powers of approval and veto over membership of a staff association. There is still a requirement that members of GCHQ staff may only belong to or engage in the activities of a trade union whose officers and elected or appointed representatives are employees of GCHQ. All forms of industrial action are also still prohibited.

The Government indicates that the GCSF applied for a certificate of independence on 19 January 1996. According to the Government, the changes introduced in December 1995 mean that staff are now able to establish alternative staff associations if they wish, subject only to the requirement that the membership be restricted to GCHQ staff. Additional changes affecting the arrangements for GCHQ staff were introduced on 23 July 1996. Staff of the security and intelligence services had previously been subject to a general ban preventing their access to industrial tribunals which has now been lifted; decisions on whether access to an industrial tribunal can be allowed will now be taken on a case by case basis, depending on whether national security considerations can be met with the procedural safeguards available.

The Government concludes that the changes it has introduced represent not only a positive response to an initiative from the GCSF, but also constitute a clear demonstration of its willingness to consider constructive proposals in relation to GCHQ.

The Committee notes this information with interest. It further notes, however, that in November 1996, the Certification Officer has refused a certificate of independence for the GCSF, even in light of the changes made over the last year. The certificate was refused for the following reasons: the federation's officers have to be employees at the centre which gives management powers of discipline; it cannot merge with another organization nor recruit from elsewhere; the federation has to satisfy the conditions of service of GCHQ; it is 80 per cent funded by management; staff have limited access to industrial tribunals and are banned from taking industrial action. The Government has indicated, however, that the GCSF is intending to appeal this decision.

The Committee notes that, under section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA), an "independent trade union" is a trade union which is not under the domination or control of an employer or group of employers or employers' association and is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control. It further notes that a certificate of independence is necessary for a trade union and its members to benefit from certain measures of protection provided for in the TULRA. For example, the following sections only apply to *independent* trade unions: section 146 (action short of dismissal); section 152 (protection against dismissal); section 168 (time off for trade union duties); section 170 (time off for trade union activities); and section 181 (disclosure of information for collective bargaining).

While it welcomes the recent measures taken by the Government to enable staff at GCHQ to establish alternative staff associations if they wish, subject only to the requirement that the membership be restricted to the GCHQ, the Committee notes with regret that the reasons given for refusing a certificate of independence to the GCSF, the only staff association presently established at GCHQ, particularly as concerns its financing and the limited access to the industrial tribunal, indicate that the GCSF is not able to organize its administration and activities in full freedom, contrary to *Article 3 of the Convention*. Furthermore, it notes that the absence of an independent status would exclude the GCSF from many of the provisions of the legislation intended to ensure that unions can organize their activities without interference. The Committee therefore requests the Government to provide further information in its next report on the measures taken or envisaged to ensure that workers' organizations at GCHQ can organize their administration and activities in full freedom.

2. *Unjustifiable discipline (sections 64-67 of the 1992 Trade Union and Labour Relations (Consolidation) Act).* The Committee recalls that the previous comments on this matter concerned the above-mentioned provisions of the 1992 Act which prevented trade unions from disciplining their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action.

In its latest report, the Government states that the legislation in question simply provides basic protection against arbitrary or discriminatory treatment, similar to other anti-discriminatory legislation and similar to restrictions on dismissal by employers and reiterates its previous reports concerning the need to afford protection to union members who exercise their civil right not to break their contracts of employment and participate in industrial action.

The Committee nevertheless must once again underline that Article 3 of the Convention provides, inter alia, that, when drawing up their constitutions and rules, trade unions should have the right (without threat of serious financial penalties upon the application of their rules) to determine whether or not it should be possible to discipline members, including by expulsion or fine, who refuse to comply with *democratic decisions to take lawful industrial action* or who seek to persuade fellow members to refuse to participate in such action. The Committee would therefore once again ask the Government to refrain from any interference which would restrict the right of workers' organizations to draw up their constitutions and rules freely.

3. *Immunities in respect of civil liability for strikes and other industrial action (section 224 of the 1992 Act).* The Committee notes that the Government once again maintains its view that nothing in the Convention requires the law to give special protection against proceedings concerning the organization of industrial action among workers who have no dispute with their own employer and that it is unaware of any potential abuse which could arise from a general prohibition on sympathy strikes. The Committee notes that, under section 224 of the Act, there is secondary action in relation to a trade dispute when a person threatens to break a contract of employment or induces another to break a contract of employment *and the employer under the contract of employment is not the employer party to the dispute*. It would point out in this respect that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute. This could be the case where, for example, the structural organization of parent, subsidiary or subcontracting companies leads to a situation where the interests of the workers cannot necessarily be resolved with their direct employer, yet the undertaking of industrial action may lead to the resolution of their legitimate claims. In this regard, the Committee recalls its position that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful and hopes that the Government will provide information in its next report on the TUC's comments on this matter.

4. *Dismissals in connection with industrial action.* In its previous comment, the Committee had drawn the Government's attention to paragraph 139 of its General Survey of 1994 on freedom of association and collective bargaining in which it noted that sanctions or redress measures were frequently inadequate when strikers were singled out

through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal) and that this raised a particularly serious issue in the case of dismissal if workers could only obtain damages and not their reinstatement. The Committee indicated that legislation should provide for genuine protection in this respect, otherwise the right to strike would be devoid of content. The Committee added that it was awaiting *both* the Government's detailed report under Convention No. 98, *as well as the Government's reply to the TUC comments under Convention No. 87* with respect to this matter *in order to assess fully the impact of the law and practice with respect to these Conventions.*

The Committee notes that the Government, in its latest report, simply refers to its report under Convention No. 98 and does not respond to the TUC's previous comments under Convention No. 87. The Committee therefore requests the Government to provide information in its next report under this Convention in respect of the TUC's comments concerning the interpretation by the Industrial Tribunal of section 238 of the TULRA with respect to the Arrowsmith printing company in Bristol.

Venezuela (ratification: 1982)

The Committee notes the information supplied by the Government in its report. With reference to its previous comments, the Committee notes the information supplied by the Government representative and the discussions which took place in the Conference Committee on the Application of Standards in June 1996 and recalls that its previous comments on the Labour Law referred to the fact that:

- the period of residence required (more than ten years) in order for foreign workers to hold trade union office is too long (section 404);
- the list of attributions and purposes required for workers' and employers' organizations is too extensive and detailed (sections 408 and 409);
- the too high number of workers (100) required to form unions of self-employed workers is too high (section 418); and
- the too high number of employers (ten) required to form an employers' organization is too high (section 419).

The Committee regrets that the Government has not provided any information in its report in regard to these comments which it has been making for several years, despite the assurance given by a Government representative to the Committee on the Application of Standards at the 1996 Conference that a tripartite committee would be established to resolve the difficulties arising from the application of the Convention.

The Committee would once again like to express the firm hope that the Government, in consultation with the social partners, will adopt shortly the necessary measures to overcome the current discrepancies between national legislation and the Convention and will provide information in its next report on progress made in this respect.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

Yemen (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

> Referring to its previous comments, the Committee recalls that for several years it has been requesting the Government to expressly amend or repeal the following legislative provisions:

(a) — the prior authorization for the establishment of a trade union or a federation (sections 154 and 158 of the Labour Code of 1970; section 57 of the regulations respecting the model statutes of the General Trade Union of Manual and Non-Manual Employees);

— the inclusion of a single trade union system in the law (sections 129, 138 and 139 of the Labour Code and sections 5(h), 41, 42, 43 and 47(a) of its regulations);

— the high number of workers required to establish trade unions (50 for a trade union or a trade union committee, and 100 for a general trade union) (sections 21, 137, 138 and 139 of the Labour Code and section 55 of its regulations),

which are contrary to *Article 2 of the Convention* which provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee also recalls that workers must be able to establish, if they so wish, trade unions outside the existing trade union structure;

(b) — the powers of the public authorities to interfere in: (a) the financial administration of trade unions (sections 132(2) and (4) and 133(13) and (14) of the Labour Code); (b) trade union activities (section 145(2) of the Labour Code and section 34 of its regulations); and (c) the formulation of their constitutions and rules (section 150 of the Labour Code and section 62 of its regulations);

— the prohibition on political activities by trade unions (section 132 of the Labour Code); and

— the denial of the right of foreign workers to hold trade union office (section 142(3) of the Labour Code),

which are contrary to *Article 3* which provides that workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities without interference by the public authorities;

(c) — the restrictions placed on the activities of trade unions to support their claims (section 16 of Ministerial Order No. 42 of 1975 concerning the procedures for the settlement of industrial disputes),

which is contrary to the right of workers and their organizations to organize their activities and formulate their programmes in defence of their economic, social and professional interests, also by calling a strike without interference from the public authorities, in accordance with the principles contained in *Articles 3 and 10*;

(d) — the possibility of the dissolution of a trade union by administrative authority (sectior 157 of the Labour Code),

which is contrary to *Article 4*, under which workers' and employers' organizations shal not be liable to be dissolved or suspended by administrative authority.

The Committee takes due note of the information provided by the Government in it report to the effect that the Unification Agreement concluded between North and Soutl Yemen provides for the application of the most favourable laws and regulations of the tw countries, pending the promulgation of unified legislation. As regards labour law, th Government indicates that the new Labour Code will soon be discussed by Parliamer (legislative power). Until its promulgation, the Government indicates that the Basic Labou Code (Act No. 14 of 1978) which does not provide for any of the restrictions under th Labour Code of 1970, will apply to all labour matters.

More precisely, with regard to violations of *Article 2* mentioned in the Committee's pric observations, the Government refers to article 39 of the Constitution of Yemen and sectic

93 of the Basic Labour Code (Act No. 14 of 1978) which guarantee to workers the right to establish and join organizations of their own choosing without having to obtain prior authorization, in accordance with the rules and regulations decided and set by these organizations, which are not subject to registration by any state authority.

As regards violations of *Article 3*, the Government declares that the establishment and subsequent operation of trade unions are not subject to any financial or administrative supervision of the public authorities. Financial supervision of trade unions, if any, is practised by the General Confederation of Trade Unions and by the general meetings of trade unions.

Finally, as regards the restrictions placed on the activities of trade unions, the Government refers amongst others, to section 93(c) of the Basic Labour Code that provides that the Federation of Trade Unions is entitled to call a strike in accordance with its own regulations and decisions. The Committee would like to recall that the right to strike is one of the essential means that should be available to workers and their organizations *at all levels* for the promotion and protection of their economic and social interests and that any limitations on the right to strike should be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The Committee expresses once again the firm hope that the Government will be able to supply information in its next report on the measures which have been taken expressly to repeal or amend the legal provisions contrary to the requirements of the Convention and to bring them into conformity with the principles of freedom of association and, in particular, through the adoption of the new Labour Code.

The Committee was later informed that a draft law on trade union organizations has been prepared; it expresses the firm hope that the provisions of this law will be in conformity with the requirements of the Convention. The Committee reminds the Government that ILO technical assistance is available if it so wishes.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Argentina, Azerbaijan, Bangladesh, Belgium, Belize, Benin, Bolivia, Bulgaria, Burkina Faso, Canada, Chad, Colombia, Croatia, Czech Republic, Dominica, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Gabon, Ghana, Guatemala, Guinea, Jamaica, Latvia, Madagascar, Mexico, Mongolia, Namibia, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Russian Federation, Seychelles, Slovakia, Slovenia, Spain, Tajikistan, Turkey, Ukraine, United Kingdom.*

Information supplied by *Australia, Austria, Belgium, Canada, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Denmark, Ecuador, Gabon, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Israel, Italy, Japan, Madagascar, Mali, Mauritania, Mexico, Mongolia, Netherlands, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Slovenia, Sweden, Tajikistan, Togo, Uruguay* and *Venezuela* in answer to a general direct request has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Djibouti (ratification: 1978)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that many of the Articles of the Convention are still not being applied.

Article 3 of the Convention. The Government states once again that no measure has been taken to set up a sufficient number of employment offices, despite the provisions of section 41 of Act No. 21/AN/83 first L of 3 February 1983 to organize the central administration of the Ministry of Labour and Social Welfare. The Committee notes that no progress has been achieved in this respect for several years and once again hopes that the appropriate measures will be taken in the near future to give effect to this Article of the Convention, and to the above provisions of the national legislation. It requests the Government to supply information on any progress achieved in this respect in its next report.

Articles 4 and 5. In its previous comments, the Committee noted that no arrangements had been made through the advisory committee provided for in section 162 of the Labour Code currently in force to involve the social partners in the organization and operation of the National Employment Service. The Government's report provides no new information on this aspect. The Committee therefore once again hopes that the Government will not fail to take the necessary steps in the very near future to give full effect to these Articles, which provide that suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and consultation with these representatives in the development of employment service policy. The Committee trusts that the Government will be able to describe in its next report the measures which have been taken or are envisaged and the progress which has been achieved with a view to ensuring conformity with these provisions of the Convention.

Articles 7 and 8. In its previous report, the Government stated that no measures had been taken to give effect to these Articles owing to the lack of qualified managerial staff in the placement division. The Committee nevertheless hoped that the Government would do its utmost to take appropriate measures in the very near future to meet the needs of particular categories of applicants for employment, such as persons with disabilities and juveniles, in accordance with these Articles. It hopes that the Government will be able to describe the progress achieved on these points in its next report.

Article 9, paragraph 4. The Committee notes from the Government's report that the project for the specialized training of managerial staff, financed by the EC and the World Bank, has come to an end. It would be grateful if the Government would indicate any action taken to continue the provision for adequate training of staff for the performance of their duties in the employment service, in accordance with these provisions of the Convention.

Point VI of the report form. The Committee would be grateful if the Government would continue to supply information on any practical difficulties encountered in the implementation of the Act of 1983 and in the application of the Convention. The Government may find it helpful to have some assistance from the ILO on certain aspects of the application of the Convention.

Egypt (ratification: 1954)

1. The Committee notes the information supplied by the Government concerning the Central Council for Manpower and Training. It has also been informed of the establishment of the Manpower and Training Planning Commission (in 1992), and the High Committee for Labour and Production Incentives (in 1995). The Committee would be grateful if the Government would state whether these bodies are consulted on the organization and operation of the employment service and on employment service policy and, if not, indicate what arrangements exist, in practice, to ensure the cooperation of representatives of employers and workers in these matters, in accordance with the provisions of *Articles 4 and 5 of the Convention.*

The Committee also notes in this connection that sections 76 (Central Advisory Labour Council) and 79 (local and sectoral advisory employment committees) of Act No. 137, 1981, are amended in the new draft Labour Code. It asks the Government to provide information on any developments in this respect.

2. The Committee hopes that in its next report the Government will not fail to provide the statistical information referred to in *Part IV* and a general appreciation of the manner in which the Convention is applied referred to in *Part VI of the report form* adopted by the Governing Body.

Peru (ratification: 1962)

1. *Articles 4 and 5 of the Convention.* Further to its previous observations, the Committee notes the Government's statement in its brief report that it considers that the creation of advisory committees associating the representatives of employers and workers would be useful and that it will indicate the progress achieved in the near future. The Committee expresses the firm hope that the Government's next report will contain information on the measures taken in practice to give full effect to these Articles.

2. *Article 8.* The Committee notes that at its 267th Session (November 1996), the Governing Body approved the report of the committee that it had set up to examine the representations made under article 24 of the Constitution of the ILO by the Latin American Central of Workers (CLAT) and the Unique Workers' Central (CUT) alleging non-observance by Peru of Conventions Nos. 11, 87, 98, 100, 111 and 122. In its recommendations, that committee considered that, in view of the particular difficulties which young persons appeared to encounter in gaining access to appropriate employment, the Government should, in its next report under article 22 of the Constitution on the application of this Convention, provide detailed information on the special arrangements made for them within the framework of the employment and vocational guidance services, in accordance with *Article 8* of the Convention. The Committee also requests the Government to provide full information on the effect given to this provision of the Convention.

[The Government is asked to report in detail in 1997.]

Philippines (ratification: 1953)

With reference to its previous observation, the Committee notes the information supplied by the Government. In particular, it notes that the development of the Public Employment Service Offices (PESOs) is continuing.

Articles 4 and 5 of the Convention. The Committee notes that, in the Social Reform Council, certain categories of people (farmers, workers in the informal sector, people with disabilities, youth, senior citizens, etc.) as well as non-governmental organizations, are consulted on social assistance programmes for which, according to the Government, the PESOs will be responsible. Nevertheless, according to the information supplied by the Government, the Committee is bound to note that the advisory committees provided for in the Convention have still not been established. It once again requests the Government to adopt appropriate measures to ensure cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy, and to provide in its next report information on any progress.

The Committee hopes that the Government will also be in a position to give indications concerning the measures taken to overcome the administrative and financial difficulties encountered by the PESOs and on the practical application of *Articles 6, 7 and 8 of the Convention.*

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.
>
> The Committee reiterates its hope that the new provisions will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, including the use of ILO technical cooperation.

United Republic of Tanzania (ratification: 1962)

Tanganyika

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Government indicates that the project document elaborated with the technical assistance of the ILO, concerning the establishment of employment promotion offices (EPOs), which would perform the role of the former employment exchanges, has not been implemented due to the lack of financial resources. The Government also states that specialization by occupation and by industries is not currently given emphasis for the same reason. In its previous report received in October 1993, the Government informed of its intention to open the EPOs in three regions of the country. The Committee hopes that the project concerning the establishment of EPOs will be put into practice in the near future and asks the Government to keep it informed of any progress made in this regard. The Committee trusts that the Government will not fail to supply, in its next report, information on measures taken in this connection with a view to ensuring full application of *Article 6 of the Convention* (Employment service's functions) and *Article 7* (Measures to facilitate within the various employment offices specialization by occupation and by industries, and to meet the needs of particular categories of applicants, such as disabled persons).
>
> The Committee in its previous comments noted from the Government's report received in October 1993 the information concerning action taken as a result of preparation of various youth programmes and consultancy services. The Committee asked the Government to continue to describe the developments in this field and, more particularly, special arrangements for juveniles made within the framework of the employment and vocational guidance services, in accordance with *Article 8*. It observes that the Government's report contains no information on this point. The Committee hopes that the information requested will be supplied by the Government in its next report in order to enable the Committee to assess the application of this Article.
>
> While noting the Government's statement in the report concerning difficulties in providing statistical information, the Committee reiterates its hope that such information will be supplied as soon as it becomes available, in accordance with *point IV of the report form*.

Turkey (ratification: 1950)

The Committee notes the information supplied by the Government and the observations made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TURK-IS) on the application of the Convention.

Articles 4 and 5 of the Convention. Although noting that TISK considers that the Convention is applied in an appropriate manner, the Committee notes that TURK-IS renews its observations with regard to the non-functioning of the advisory committees provided for by the national legislation (the Act of 1946 on the employment service, as revised). It notes that the Government confirms in its report that these committees are not in operation. In this respect, the Government states that the Bill to modernize the employment service, the adoption of which is still under way, contains provisions to secure the cooperation of the representatives of employers and workers in the employment service. With reference to its previous direct requests and recalling that Articles 4 and 5 of the Convention provide that suitable arrangements should be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and the development of its general policy, the Committee trusts that the Government will take the necessary measures in the very near future to give effect to these provisions of the Convention.

The Committee is addressing a request directly to the Government on other matters.

Venezuela (ratification: 1964)

1. The Committee notes the Government's report for the period ending 1 June 1996. The Committee recalls that in its direct request of December 1995 it noted the observations made by the International Organization of Employers (IOE), which stated that the Government had not given effect to the recommendations of the Committee set up to examine the representation submitted by the IOE and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) under article 24 of the Constitution of the ILO. These observations were brought to the knowledge of the Government, whose comments in its report are confined to stating that within the framework of the structural modernization of the National Employment Service it is proposed to take the necessary action for the application of section 597 of the Organic Labour Act and to follow the guidelines set out in *Articles 4, 5 and 10 of the Convention*. The Government refers to a measure adopted in 1966, as well as a plan of 1992 for the establishment of a regional advisory committee in the State of Carabobo. The Government states that these initiatives did not in practice achieve the objectives for which they had been adopted and that currently relations with the representative organizations of employers and workers are maintained in an informal manner, as the principal support for the implementation of the employment promotion programme of the public employment agencies.

2. The Committee notes that, as set out in the May 1993 report of the Committee established by the Governing Body to examine the representation made by the IOE and FEDECAMARAS, the matters raised in relation to *Articles 4, 5 and 10* are the following:

(i) the Government is requested to provide additional information on the measures for the application of section 597 of the Organic Labour Act respecting the establishment of advisory committees and cooperation with employers and workers. This information should indicate the number of advisory committees set up at the national and regional levels, the manner in which they are constituted and the procedures adopted for the appointment of employers' and workers' representatives. Furthermore, it was recommended that arrangements should be made through the advisory committees for the cooperation of employers and workers in the organization and operation of the employment service and in the development of employment service policy;

(ii) in order to avoid any ambiguity in the interpretation and application of section 604 of the Organic Labour Act, the Government was invited to amend its text in order to bring it fully into line with *Articles 4 and 5*, which provide for no distinction between employers' and workers' organizations in regard to their cooperation in the organization and operation of the employment service;

(iii) the Government was invited to provide information on the measures adopted, in collaboration with employers' and workers' organizations, in accordance with *Article 10*, to encourage the full use of the employment service by employers and workers on a voluntary basis.

3. The Governing Body requested the Committee of Experts to follow up these matters. The Committee is bound to note that the Government's report does not contain information indicating that any real progress has been made to resolve the matters raised previously. The Committee therefore urges the Government to adopt measures in the near future to give full effect to the provisions of *Articles 4, 5 and 10*, and hopes that it will provide a detailed report on the application of the Convention, including the information requested on the matters on which it has been commenting for many years.

Zaire (ratification: 1969)

Article 3 of the Convention. The Committee notes that, according to the information supplied by the Government, it has not been possible to continue the work begun in 1986 of establishing employment offices and that existing offices are experiencing operating difficulties due to lack of qualified staff and equipment. The Committee can only reiterate the hope that the Government will be able to take the measures necessary to allow the network of employment offices to operate and develop in accordance with the provisions of this Article of the Convention and will be able to supply the relevant information.

Articles 4 and 5. The Committee notes that the draft ordinance establishing the new National Employment Service, which, according to the Government, would ensure the cooperation of employers' and workers' representatives in accordance with Articles 4 and 5, has still not been adopted. It requests the Government to indicate in its next report in what way the consultations prescribed are conducted in practice and provide the Office with the text of the ordinance once it is adopted.

The Committee notes that the Government indicates that it will be able to supply in its next report the statistical information required.

* * *

In addition, request regarding certain points are being addressed directly to the following States: ***Azerbaijan, Guinea-Bissau, Libyan Arab Jamahiriya, Mozambique, Sao Tome and Principe, Turkey.***

Convention No. 89: Night Work (Women) (Revised), 1948 [and Protocol, 1990]

Costa Rica (ratification: 1960)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report.

The Committee hopes that the Government will continue to supply information on the practical application of the Convention.

Ghana (ratification: 1959)

The Committee notes the information provided by the Government in its report.

Article 4(a) of the Convention. In its previous observations, the Committee had reiterated the need to amend section 41(2)(a) of the Labour Decree of 1967 which, contrary to the Convention, permits the suspension of the prohibition of night work by women when work is interrupted by reason of a strike. The Government states, in its report, that the issue has been referred to the tripartite National Advisory Committee on Labour and it hopes that the Committee which is presently addressing other equally important issues would appropriately tackle the issue with the view of amending the offending provision of the law.

The Committee notes this information and hopes that the Government would indicate any progress achieved in this regard.

India (ratification: 1950)

With reference to its previous comments, the Committee notes the Government's reply to the comments made by the Centre of India Trade Unions (CITU) in which the Government indicates that, in conformity with *Article 2 of the Convention*, section 66 of the Factories Act 1948 does not authorize the employment of women beyond ten o'clock in the evening. It also notes that the employment of women in night shifts at the hosiery units in Tirupur (Tamil Nadu) has been considered and that the State Government of Tamil Nadu has indicated that in no factory have women workers been employed beyond 10 p.m. It notes further that, in 1994, 17 clothing factories in Tirupur were granted permission to employ women workers up to 10 p.m. Furthermore, the State Governments of Goa, Madhya Pradesh, Orissa, Assam, Gujarat and Kerala have by specific notifications authorized the employment of women between 7 p.m. only and 10 p.m. in a few units, subject to certain conditions, e.g. transportation, security, food for women workers, etc. The Government states also that, under section 66 of the same Factories Act, night work for women has also been allowed up to 10 p.m. in the States of Madhya Pradesh (in the ginning factories and Hotline Tele-tube and Components Ltd., Malanpur, for a period of three years); Goa (for the fish processing unit and the textile unit); Orissa in Ipitron Time Ltd., Mancheswar Industrial Estate, Bhubaneshwar and Kalinga Iron Works, Distt. Keonjhar and Tripura (work in fish curing or fish canning factories). The Committee notes these indications and considers that the number of exemptions and the number of States involved are both on the increase.

The Committee recalls once again that under *Article 5 of the Convention*, the prohibition of night work for women may be suspended only when, in case of serious emergency, the national interest demands it and after consultation with the employers' and workers' organizations concerned. The Committee recalls the adoption by the International Labour Conference of the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), in order to allow greater flexibility. It asks the

Government to provide information on the measures which have been taken to bring practice into conformity with national laws and the international commitments which have been undertaken.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Costa Rica (ratification: 1960)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report.

The Committee hopes that the Government will continue to supply information on the practical application of the Convention.

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

A request regarding certain points is being addressed directly to *Guinea Bissau*.

Convention No. 94: Labour Clauses (Public Contracts), 1949

Brazil (ratification: 1965)

With reference to its previous observations, the Committee notes the information supplied by the Government in its report, including Act No. 8883 of 8 June 1994 and Normative Instructions of the Secretariat for the Federal Administration (SAF) No. 8 of 26 August 1994, and No. 13 of 21 October 1994, relating to standards on public administration tenders and contracts.

The Committee notes that the provision of section 44, paragraph 3, of Act No. 8666 of 21 June 1993, as amended by Act No. 8883, is still maintained, according to which a contract proposal can be accepted only if the overall or partial sums it contains are compatible with the prices of inputs and market wages. It further notes that Normative Instruction No. 8 includes provisions that the cost of labour remuneration in a contract proposal should refer to the remuneration fixed for the occupational category by collective labour agreements or other equivalent, including wages and other advantages established in labour legislation. The Committee considers that these provisions serve the purpose of ensuring to the workers employed by public contractors that the level of wages is not less favourable than the prevailing market wage.

The Committee would however point out that the requirements of *Article 2, paragraphs 1 and 2, of the Convention* relate not only to the level of wages but also to the labour conditions such as hours of work and holidays. It therefore requests the Government to indicate the measures taken or envisaged to ensure that the workers concerned also enjoy labour conditions other than wages that are not less favourable than normally observed for a similar kind of work in the district.

The Committee notes that further information has been supplied by the Government concerning the efforts to streamline the administrative process of services and supplies, including the requirement of a proof of up-to-date payment of social contributions, but would add that such a measure is not sufficient to fulfil the above-mentioned requirement of the Convention. It again recalls that the Convention stipulates, for this purpose, the insertion of appropriate labour clauses in public contracts, and suggests that the Government consider consulting the International Labour Office on further necessary steps to apply the Convention in this respect.

The Committee also requests the Government to supply information on the application of the Convention in practice, including, for instance, extracts from official reports, and cases in which tenders for public contracts have been refused because of the incompatibility of the calculated cost with market wages, under section 44, paragraph 3, of Act No. 8666.

Cameroon (ratification: 1962)

The Committee notes with regret that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following points:

> The Committee takes note of the information contained in the Government's last report to the effect that it would adopt the necessary measures to bring the legislation into conformity with the provisions of the Convention.
>
> The Committee recalls that it suggested that the Government consider the possibility of requesting ILO assistance to adopt the necessary legislation to apply the Convention. The Committee asks the Government to continue to indicate the measures taken in this respect and hopes that the legislation necessary to apply the Convention will be adopted in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ghana (ratification: 1961)

The Committee has noted the Government's report. It has also taken note of the specimen of a certificate which a company tendering for a public contract must obtain as a prerequisite for the award of such contract. It certifies that the tenderer has duly informed itself from the Labour Department about all requirements and regulations affecting workmen in the country, and has no record of labour law violation, particularly as regards payment of wages, workmen's compensation and hours of work. The Committee points out, however, that the essential purpose of the insertion of labour clauses in public contracts under the Convention goes beyond the aims of the certificate system; its purpose is to eliminate the negative effects of competitive tendering on the workers' labour conditions.

The Committee notes in this regard that the Government refers to the discussion of the matter by the tripartite National Advisory Committee on Labour with a view to bringing the national legislation into conformity with *Articles 2 and 5 of the Convention* (inclusion of labour clauses in public contracts, and application of adequate sanctions and measures to ensure the payment of wages). Recalling that the Government has been referring to its intention of changing legislation since 1991, the Committee hopes that progress will be reported in the very near future. It suggests that the Government consider consulting the International Labour Office on necessary steps to apply the Convention in this respect.

[The Government is asked to report in detail in 1998.]

Mauritius (ratification: 1969)

Further to its previous observation, the Committee notes that the report of the technical committee instituted to review the 1975 Labour Act is still under consideration by the Government and that the Government has recently referred the matter to the tripartite Labour Advisory Board which will advise the Minister on the amendments to be made to the Act.

The Committee recalls that, for a number of years, the Government has been indicating its intention to revise the 1975 labour legislation. It also recalls that the Labour Act of 1975 repealed the Labour Clauses in Public Contracts Ordinance of 1964, which had previously given effect to the provisions of the Convention. The Committee again suggests that the Government consider the possibility of taking the provisions of the above Ordinance into account in the review of the Labour Act.

The Committee can only reiterate the hope that the Government will take all necessary steps to ensure that amendments to the Labour Act are adopted in the near future in order to give effect to the provisions of this Convention, and it asks the Government to report any progress made.

[The Government is asked to report in detail in 1998.]

Turkey (ratification: 1961)

With reference to its previous observation, the Committee notes the Government's report, including the provisions of the attached "General Specifications for Public Works", as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-IS) and the Turkish Confederation of Employers' Association (TISK).

Road, building and construction sector

In its previous observation, the Committee noted the comments made by the TÜRK-IS, with reference to the spreading practice of subcontracting, that the collective labour agreement concluded by the General Directorate of Highways and the Road, Building and Construction Workers' Union of Turkey (YOL-IS) was not applied to the employees of the contractors and subcontractors of the General Directorate. The Committee notes that, according to TÜRK-IS, there has been no positive steps taken to ensure the implementation of the Convention in this sector.

The Government refers, in response, to the provisions of Decree No. 88/13168 dated 1 November 1988 concerning general principles governing working conditions (labour clause) to be included in public contracts, and in particular to its section 2(b) stipulating that a contractor must secure to the workers employed wages and other conditions of work that are not less favourable than those established by legislation or collective agreement for work of the same character in the trade or industry concerned. In addition, the "General Specifications for Public Works" contains provisions in its section 33 on the application of penal provisions in the case of violation by contractors of the required labour conditions. The TISK also refers to the provisions of the same Decree and the "General Specifications for Public Works" in its comments.

The Committee recalls that it noted the above Decree already in 1989. It further notes that the text of the "General Specifications" provided with the Government's report indeed contains provisions corresponding to the labour clauses in line with *Article 2(1) of the Convention* (section 33(13) reads: "the contractor shall ensure to the workers he employs wages and other conditions of work that are not less favourable than those established by legislation or collective agreement for work of the same character in the trade or industry concerned ..."), and also stipulates the application of penal provisions in the case of violation (section 33(14)) as well as a system of supervision by the control body (section 33(3) and the following).

The Committee notes from the above information that the existing legislative provisions and the "General Specifications" are in conformity with the requirements of the Convention. It points out that the present issue relates to the application in practice of the national provisions that give effect to the Convention. The Government however indicates in the report that there are no difficulties regarding the application of the Convention in practice. The Committee therefore urges the Government to supply full information on the measures taken or envisaged to ensure that, in accordance with the above provisions of the Decree and the "General Specifications", the workers employed by public contractors enjoy wages and other conditions of work that are not less favourable than those established by the existing collective agreement for work of the same character in the sector of road, building and construction. It asks the Government to indicate, in particular, the functioning of the control body under section 33 of the "General Specifications" and the inspection under section 4 of Decree No. 88/13168, including the number and nature of the cases in which violations are observed and penal sanctions are actually applied in accordance with the provisions referred to.

Contracts for the manufacture and assembly of materials

The TÜRK-IS also points out that Decree No. 88/13168 covers only contracts concerning construction, services, earth-moving and transportation of materials, and that the alteration, repair or demolition of public works and the manufacture and assembly of materials, supplies or equipment are excluded from the obligation of labour clauses under this Decree. The Committee notes this observation and recalls that it has raised the point under the previous direct requests, asking the Government to take the necessary measures to ensure that the labour clauses referred to in *Article 2* of the Convention are included in public contracts for all the activities covered by the Convention.

The Committee notes that the Government again states, in the report, that the activities that are outside the scope of Decree No. 88/13168 are covered by Labour Act No. 1475. The Committee points out that the fact of the general labour legislation being applicable to the activities concerned does not release the Government from the obligation to take the necessary measures to ensure the inclusion of labour clauses in public contracts for the said activities. This is because the minimum standards fixed by law are often improved upon by means of collective bargaining or otherwise and also because the provision of penalties, such as the withholding of payments to the contractor make it possible to impose more directly effective sanctions in case of infringements.

The Committee therefore requests the Government to supply information on the measures taken or envisaged to ensure the insertion of labour clauses in accordance with *Article 2* in all contracts covered by *Article 1(c)(i) and (ii)* by means of extending the application of Decree No. 88/13168 or otherwise.

Awareness raising

The Committee also notes the comment of the TÜRK-IS on the non-observance of *Article 2(4)* of the Convention under which the competent authority should take measures by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the labour clauses. It asks the Government to indicate measures taken or envisaged to bring the relevant provisions of the Decree and the "General Specifications" to the attention of tenderers for public contracts.

[The Government is asked to report in detail in 1997.]

Zaire (ratification: 1961)

The Committee notes with regret that in its report the Government repeats, as it has for years, that the legislative text will be communicated as soon as it has been brought into line with the provisions of the Convention.

The Committee recalls that it has addressed the application of this Convention in its comments for many years and that in 1976, at the Government's request, the International Labour Office sent a draft of new provisions which might be incorporated into the existing legislation in order to give effect to the Convention. However, despite repeated assurances from the Government that it would adopt the necessary texts to give effect to this Convention, no such texts have as yet been adopted.

The Committee again strongly suggests that the Government take the necessary steps to ensure that the text designed to give effect to the Convention, for which preparations started in 1979, is adopted in the near future.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Burundi, Djibouti, Saint Lucia, United Republic of Tanzania.***

Convention No. 95: Protection of Wages, 1949

Argentina (ratification: 1956)

The Committee notes the information supplied by the Government in reply to the comments made by several organizations of workers, as well as the statement made by the Government representative at the Conference Committee in June 1996 and the discussion which took place thereafter.

Benefits to improve the nutrition of workers and their families

The Committee previously noted Decrees Nos. 1477/89 and 1478/89 respecting benefits to improve the nutrition of the worker and his family, as well as Decree No. 333/93 enumerating the benefits that do not have the character of remuneration. It pointed out that these "benefits", however they are termed (bonuses, supplementary benefits, etc.), constituted components of remuneration in the sense of *Article 1 of the Convention*, and requested the Government to ensure that these benefits should be subject to the measures set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16* of the Convention.

The Committee notes that Decree No. 1477/89 was repealed by virtue of Decree No. 773/96 of 15 July 1996, which refers in the preambular part to the comments by the ILO supervisory bodies. It requests the Government to ensure that, since the benefits under Decree No. 1477/89 no longer exist, so long as any allowances or benefits granted instead of them fall within the scope of the Convention, such new allowances or benefits are protected in accordance with the provisions of the Convention.

Settlement of the debts of the State

The Committee also noted in the previous observation, Decree No. 1639/93 of 4 August 1993, which was intended to speed up the procedures for the settlement of debts of the State up to 1 April 1991 which were consolidated under the terms of Act No. 23982 and recognized by the courts. It notes the explanation by the Government at the Conference Committee that the provisions of the above Decree covered the wage arrears owed to workers in the public service, and that Decree No. 483/95 sought further to simplify the procedure of liquidating the above debt. The Committee requests the Government to continue to supply information on the progress made in this matter as regards the settlement of the wage arrears owed to workers in the public service.

Deferred payment of wages

In its previous observations, the Committee noted the comments made by the Confederation of Educational Workers (CTERA) and the Union of Educational Workers of Rio Negro, concerning the deferred payment of wages which are due. The CTERA mentioned in particular Decree of the Province of Entre Rios No. 5863/94 concerning deferred payment according to a plan prepared by the Secretariat of Finance taking into account the available financial resources.

The Government states that many provinces in Argentina were currently experiencing a serious financial crisis which affected their ability to fulfil their obligations. It explained that the Provincial Decree No. 5863/94 was meant to give priority to the payment of public servants in relation with other debts of the provincial government, and that this Decree imposed a deadline for effective payment of public sector salaries at the 15th day of the month following the one in which payment became due. The Government added that in any case it has been superseded by Decree No. 411 of 29 February 1996, under which the due date for payment of wages in the public sector was to be no later than the 10th of the month.

The Committee takes due note of the above information and requests the Government to continue to supply information on the situation in the provinces referred to, and in particular on the application in practice of the above Decree, and any measures taken to ensure the regular payment of wages in accordance with *Article 12(1) of the Convention*.

Payment in local government bonds

The Committee further noted the observations from the World Federation of Trade Unions, which refers to widespread protests of state employees in Cordoba over the non-payment of wages and the decision of the provincial government of Cordoba to pay their wages in local government bonds.

In response, the Government also referred to the profound financial crisis from the beginning of 1995 in the region. In Cordoba, provincial Act No. 8.472 was adopted in July 1995 to declare economic and financial emergency in the public sector of the province, which resulted in a delay in payment of sums due to employees. Among various measures taken in the circumstances, it was made possible to pay wages up to $400 in cash and the rest in CECOR (Certificates of Cancelation of Obligations of the Province of Cordoba), which are accepted for its nominal value in all the shops in the Province and also usable to pay debts to the provincial state (such as tax). According to the Government, the CECOR are bonds for a term of 24 months with 12 per cent of annual interest. It also adds that, since the average cash salary is $398 ($588 including social contributions and pension funds), the payment of wages in the form of CECOR was limited to higher level staff who receive the bonds for the part in excess of $400, and that 50,000 employees out of 63,000 thus receive their full salary in cash.

The Committee notes the above, and in particular the Government's explanation of the emergency nature and the limited use of the bonds. It recalls however that the payment of wages in local bonds is a measure in violation of *Article 3 (payment of wages in legal tender)*. It requests the Government to continue to report on the development of the matter also in the light of *Article 12(1) (regular payment of wages)*.

Maritime sector

In reply to the previous comments made by the Union of United Maritime Workers (SOMU), including reference to deferred payment and non-payment of wages in the maritime sector, the Government mentions various measures taken: the claims of the SOMU and the Centre of Masters of River Boats had been dealt with by the Directorate of Individual Labour Relations, which ordered the enterprises concerned to pay immediately the wage arrears due; the National Directorate of Labour Inspection had also intervened to record and penalize violations; the tripartite consultation committee to promote the application of international labour standards, which include SOMU representatives, examined the observations of the Committee of Experts on Convention No. 95 among others.

The Committee notes the above indications. It also notes that the SOMU communicated since its last session observations on the application of Convention No. 81 on labour inspection and that the attached documents include copies of several claims made against the ship owner about non-payment or delayed payment of wages. The Committee therefore requests the Government to continue to provide detailed information on measures taken to ensure the practical application of the Convention (in particular *Article 12*) in the maritime sector, and on any difficulties encountered, including, for instance, extracts from official inspection reports and information on any infringements observed and sanctions applied with regard to the payment of wages.

The Joint Technical Commission of Salto Grande

Since its previous session, the Committee has further received observations from the Coordinating Officers of the Workers of Salto Grande. This organization points out that the Joint Technical Commission of Salto Grande, an international organ created by an agreement between Argentina and Uruguay for utilization and exploitation of River Uruguay, unilaterally reduced the wages of its employees by 10 per cent. The Committee notes the Government's response that the Joint Technical Commission of Salto Grande is an inter-state public organization, which as such is not a party to the Convention, and which, by virtue of section 4 of its Headquarters Agreement, approved by Act No. 21.756, enjoys immunity from judicial or administrative procedures of Argentina. The Committee notes that the Government communicated the workers' comments to the Technical Commission. In this circumstance, the Committee has no further comments towards the Government of Argentina.

Application in practice

The Committee hopes that the Government will provide information on the application of the Convention in practice and measures taken to ensure it, in accordance with *Article 16* of the Convention, including information on any difficulties encountered.

[The Government is asked to report in detail in 1997.]

Belarus (ratification: 1961)

The Committee notes the information supplied by the Government in its report, in particular on the provisions of sections 96 and 98 of the Labour Code as amended by the Act of 2 February 1994.

In the absence of any information on the application of section 96 of the Labour Code under which wages must be paid regularly, at least once a month and at a date fixed by agreement, the Committee asks the Government to provide detailed information on the application of this provision which gives effect by law to *Article 12 of the*

Convention which provides for regular payment of wages. It also asks the Government to indicate what enforcement measures, if any, have been taken under section 98(3) of the Labour Code as amended, which states that where an employer fails to pay the amounts due, the worker is entitled to claim payment of his average wage for each day of the delay.

The Committee raises other points in a request addressed directly to the Government.

Brazil (ratification: 1957)

1. *Non-payment of wages.* The Committee notes the observation jointly made by the Union of the Technical Assistance and Rural Development Workers of the State of Minas Gerais (SINTER) and the Federation of Unions and Associations of Rural Development Workers of Brazil (FASER) concerning non-payment of wages by the Technical Assistance and Rural Development Enterprise (EMATER) of the State of Minas Gerais.

The Committee notes the Government's statement in reply that, out of 3,483 employees and ex-employees making claims, 3,427 have already received the sums due by the time of response and that the payment of amounts due to the remaining 56 ex-employees will be shortly done following the final decisions of labour judiciary. Recalling that the Convention applies to all persons to whom wages are paid or payable (*Article 2(1)*), the Committee notes that the requirement to ensure the wage payment in accordance with the Convention is not affected by the status of EMATER whether it is a state enterprise or a private one. The Committee requests the Government to continue to provide information on any further progress made towards the settlement of the amounts due to the above ex-employees of EMATER in accordance with *Article 12(2)*, and also on measures taken or envisaged, if there are any, to ensure the application of the Convention in equivalent bodies in other states than Minas Gerais.

2. As to the points raised in the Committee's earlier observation concerning *Articles 6, 8, 9 and 10*, it notes that the Governing Body at its 264th Session (November 1995) had adopted the report of the tripartite committee, which was entrusted to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution, alleging non-observance by Brazil of Conventions Nos. 29 and 105. It notes that the allegations made, which were considered to be well-founded by the above committee, include several aspects of situations that also fall within the scope of this Convention on the protection of wages. The Committee refers to the provisions, for instance, of *Article 4* (limitation and conditions of wage payment in kind), *Article 6* (prohibiting employers from limiting the freedom of the workers to dispose of their wages), *Article 7* (conditions on the operation of works stores, including the prohibition of coercion to use them), *Article 8* (conditions and limits of deductions from wages to be decided by legislation or collective agreement), *Article 9* (prohibition of deductions from wages with a view to obtaining or retaining employment), *Article 10* (procedures and limits of attachment or assignment of wages) and *Article 14* (measures to ensure that workers are informed of the conditions and particulars of wages).

With reference to its comments on Conventions Nos. 29 and 105, the Committee requests the Government to examine the situations also in the light of this Convention, in particular under the Articles cited above, to take all the necessary measures accordingly, and to supply information on them. It also asks the Government to provide information on any infringements registered and the sanctions imposed in this regard.

[The Government is asked to report in detail in 1997.]

Colombia (ratification: 1963)

The Committee notes the observations made by the General Confederation of Democratic workers (CGTD). The CGTD points out that, in violation of the Convention, wages have not been paid for several months to workers in the state and public sectors, for example, in the Departments of Putumayo, Vinchada, Sucre and Meta, and also in the Municipalities of Tolú, Quibdó, Montería, Puerto Asis and Caicedonia. The CGTD adds that, although this irregularity has been brought to the attention of the Government, in particular, the Ministries of Labour, the Interior, and the Council of Social Policy, no action has been taken to impose sanctions or other measures to ensure the payment of wages to these workers.

The Committee notes that the Government has not provided its observations on the points raised in the above comments. It requests the Government to provide full information on this issue in the light of *Article 12(1) of the Convention* (regular payment of wages).

[The Government is asked to report in detail in 1997.]

Congo (ratification: 1960)

1. The Committee notes that the Governing Body adopted at its 265th Session (March 1996) the report of the committee set up to examine the representation made by the International Organization of Energy and Mines (OIEM), under article 24 of the ILO Constitution, alleging non-observance by Congo of Convention No. 95. The above-mentioned Committee noted the measures taken by the Government, particularly the financial assistance granted to the former workers of the Ogoué Mining Company (COMILOG) and their families, and concluded that the Government had not ensured the effective application of the relevant provisions of the Convention. It also noted the Government's willingness to assist the workers in bringing the case before the courts by appointing a senior official to follow up the case so that the workers may recover their rights and obtain compensation for the injury they have suffered.

In view of the recommendations in the above-mentioned report, the Government is requested to take all appropriate steps to ensure the effective application of the provisions of the national legislation which give effect to *Articles 8, paragraph 1, and 12, paragraph 1, of the Convention*, in particular: (i) by adopting measures which will enable the former workers of COMILOG to recover promptly all the amounts due to them; (ii) by applying, where appropriate, relevant sanctions under *Article 15(c)* of the Convention. The Government is also asked to supply detailed information in its reports on the application of the Convention on the measures taken to settle the matter of the payment of the sums due to the former workers of COMILOG and on the results obtained by the application of such measures. The reports should include information on the number of workers concerned, the amounts still outstanding and the administrative or judicial decisions concerning the application of the provisions giving effect to the Convention.

The Committee asks the Government to provide the information requested by the Governing Body.

2. The Committee notes the decision taken by the Governing Body at its 265th Session (March 1996), to set up a tripartite Committee to examine the representation submitted by the Trade Union Confederation of Congo Workers (CSTC), under article 24 of the ILO Constitution, alleging non-observance by Congo of Convention No. 95.

[The Government is asked to report in detail in 1997.]

Dominican Republic (ratification: 1973)

Protection of wages in sugar plantations. In its previous observation, the Committee noted that the provisions of the Labour Code (promulgated by Act No. 16-92 of 29 May 1992) on the protection of wages are applicable to rural workers, including those in sugar plantations, by virtue of section 281, and asked the Government to provide information on its application in practice. The Government has supplied information on the application of the provisions of the Convention during the sugar-cane harvest in 1994-95.

The Committee notes that, since then, comments have been received concerning the application of several Conventions including this Convention to workers who are Haitian or of Haitian origin in sugar plantations, from the following workers' organizations: National Union of Agricultural Workers of Sugar and Similar Plantations (SINATRAPLASI); Union of Cane Cutters of Barahona Plant (SIPICAIBA); and Union of Workers of Agricultural and Similar Plantations of Barahona Plant (SITRAPLASIB).

Noting that the above comments of the workers' organizations were communicated in November 1996 to the Government for observations, the Committee requests the Government to supply its observations on the points raised in them so that the Committee will be able to examine them at its next session.

The Committee also asks the Government to supply information on the questions raised in the previous direct request which is again addressed to it.

[The Government is asked to report in detail in 1997.]

Libyan Arab Jamahiriya (ratification: 1962)

Further to its previous observation, the Committee notes the discussion which took place at the Conference Committee in June 1996 on the final settlement of wages due to Palestinian workers who had recently left the Libyan Arab Jamahiriya.

The Government confirmed at the Conference Committee its earlier statement that all the entitlements of Palestinians working with employment permits and formal contracts had been respected at the expiry of their contract, including the entitlements arising both from employment and from social security, and this was the case for 95 per cent of the Palestinian workers. It added that the employment agencies of the Public Office for the Labour Force had not received any complaints to that date concerning the entitlements of a Palestinian worker. The Government further stated that, parallel with a meeting of the Council of the ICFTU for the Arab Trade Unions, a meeting was held in Tripoli in March 1996, attended by the Palestinian Trade Union Federation, the General Federation of the Producers' Trade Unions and the International Confederation of Arab Trade Unions, where it was agreed to look into the claims of Palestinian workers and to settle them in an amicable way and on a bilateral basis between the two federations and under the auspices of the International Confederation of Arab Trade Unions. The Government emphasized that it was ready to take all the necessary measures to settle the entitlements of any worker who could prove the existence of outstanding entitlements.

The Committee takes due note of this information. Recalling that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, it requests the Government to provide information on all measures taken to ensure the final settlement of wages at the expiry of a contract, in accordance with *Article 12(2) of the Convention*, for the Palestinian workers other than those with employment permits and formal contracts.

[The Government is asked to report in detail in 1997.]

Nicaragua (ratification: 1976)

In its previous observation, the Committee noted the report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution, alleging non-observance of certain Conventions including Convention No. 95 by Nicaragua. In the above report, the Government is requested to take the necessary measures, in accordance with *Articles 12(1) and 15(c) of the Convention*, to ensure compliance by all enterprises with the legislative provisions such as the Labour Code relating to the protection of wages, and in particular the regular payment of wages. The Committee consequently requested the Government to supply information on measures taken pursuant to these recommendations so as to follow up the issue.

The Committee notes the Government's report refers only to the national provisions giving legislative effect to the Convention and does not include any information on their application in practice. It however notes the Government's reference to the Act to Create the National Payroll (Decree No. 1160, published in the *Official Gazette* No. 1 of 3 January 1983) and the Regulations made thereunder, although this information is also limited to the contents of provisions and not about the actual practice. The Committee therefore requests the Government to supply full information on any measures taken or envisaged to ensure the application of the national legislation giving effect to the provisions of the Convention, and in particular *Article 12(1)* on regular payment of wages mentioned above. It asks the Government to include, for instance, information on the inspections made, cases of violations reported and penalties or other sanctions imposed in accordance with *Article 15(c)*. The Committee also requests the Government to supply a copy of the payroll formats determined by the Ministry of Labour in accordance with section 1 of the above Regulations, and to give a general appreciation of the manner in which the above legislation on the national payroll is applied in practice.

The Committee is also addressing a direct request on certain other points.

[The Government is asked to report in detail in 1997.]

Russian Federation (ratification: 1961)

Further to its previous observation concerning the application of *Article 12(1) of the Convention* (regular payment of wages), the Committee notes all the comments received from various workers' organizations since its last session, namely: Russian Coal Employees' Union (ROSUGLEPROF), Trade Union Federation of Primorsky Kraï; Federation of Independent Trade Unions of Russia; Education International (EI); Education and Science Employees' Union of Russia (ESEUR); Trade Union Association of the Republic of Karelia; Republican Trade Unions of Workers of Education and Science, Health Care and Culture; Medvezhegorsk District Trade Union of Educational Workers; and Segezha District Trade Union of Health Care Workers.

The Russian Coal Employees' Union (ROSUGLEPROF) indicates that wages have not been paid to miners for three to six months and that social tension has reached a dangerous level in coal-mining regions. The Trade Union Federation of Primorsky Kraï states that wages have not been paid for five or six months and that the total wage debt in the Primotje territory exceeds 800 billion roubles, including 146 billion for energy workers, 115 billion for coal industry workers, 115 billion for budget sector employees, and 75 billion for municipal and communal workers. The Federation of Independent Trade Unions of Russia states, further to its earlier comment, that total wage debts at enterprises of all kinds of ownership reached the sum of 29.3 trillion roubles (US$5.6

billion) by the end of July 1996. The Education International (EI) and Education and Science Employees' Union of Russia (ESEUR) jointly comment on the non-payment and the delay in payment of salaries for employees in the education sector and provided a copy of the letter from the Deputy Minister of Labour concerning the situation of non-payment of wages. According to this letter, the total sum of non-payment of wages as at 20 December 1995 from the federal budget stood at 952.6 thousand million roubles (education: 622.3 thousand million; health: 248.0; culture: 331; mass information resources: 37.2; and social policy: 1.4). The same letter further cites non-payment of wages to workers in the budget sector (in thousand million roubles) in several territories: Mordovian Republic 53.3; Altai kraï 43.4; Astrakhan oblast 6.5; Kurgan oblast 52.5; Nizhegorod oblast 42.0; Novosibirsk oblast 12.2; Orenburg oblast 46.1; Perm oblast 14.7; Tula oblast 13.6; and Nenets autonomous oblast 0.51. The Trade Union Association of the Republic of Karelia points out that wages have not been paid regularly in contravention of section 96 of the Labour Code, and that workers are offered consumer goods to sell so as to keep part of proceeds with them. Cases of non-payment of wages amounting to tens of thousand millions of roubles are also mentioned by the other workers' organizations.

The Committee notes the above information with grave concern, since the situation is too serious to be considered as purely one of transition to market economy. It recalls that the present problem concerns the implementation in practice of the national labour legislation which gives effect to the Convention. Noting that the Government has communicated no observation in response to these comments, the Committee urges the Government to indicate all the measures taken to ensure the regular payment of wages, not only in the sector where wages are paid directly from the federal budget but also in all other sectors by such means as effective supervision, imposition of appropriate penalties to prevent and punish infringements and steps to make good the prejudice suffered. In particular, the Committee asks the Government to include information on any decision made by courts of law or other tribunals concerning the question of regular payment of wages.

The Committee earlier noted the Government's indication that a Bill had been adopted to amend the Labour Code concerning sanctions for violation of the Code, in particular in the case of unpaid or late payment of wages and that a law was adopted in third reading by the Duma (the lower house of Parliament) concerning the compensation paid to the citizens for material loss for unpaid or late payment of wages. It asks the Government to include detailed information on this or similar legislative measures in its report.

In the absence of reply to the previous observation concerning other provisions of the Convention such as: *Article 3* concerning the prohibition of payment with promissory notes or coupons; *Article 4* concerning the regulation of payment in kind; *Article 11* on the treatment of wages as privileged credit in the case of bankruptcy; and *Article 15* on the sanctions in case of violation, the Committee requests the Government to indicate measures taken or envisaged to ensure not only the regular payment of wages but also the application of all the provisions of the Convention. It also requests the Government to include, for instance, extracts from official reports that show the number of investigations made, infringements observed and penalties imposed.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

Ukraine (ratification: 1961)

Further to its previous observation concerning the application of *Article 12(1) of the Convention* (regular payment of wages), the Committee notes the comments received from various workers' organizations since its last session. The Central Committee of the Trade Union of the National Ukrainian Academy of Sciences indicates in the letter of January 1996 that in violation of both the national labour law and the Convention, the payment of wages of state employees of the National Academy institutions has been delayed for two to three months or more, because the Cabinet of Ministers of Ukraine constantly delays the financing of the National Ukrainian Academy of Sciences. The Kharkov Committee of the Trade Union of the National Ukrainian Academy of Sciences also noted the deterioration of the situation since its previous comments and refers to non-payment amounting to five months' wages in July 1996. The World Federation of Trade Unions in the letter dated 15 October 1996 mentions the prolonged non-payment of wages of up to eight months. Comments were also received from the Ukrainian Health Care Union in October 1996 about the non-payment of wages to health-care workers. The Committee further received during its session a comment about non-payment of wages from the Central Committee of the Ukrainian Trade Union of Educational and Science Employees, and will examine its contents at the next session together with the observations that the Government may make on it.

The Government refers, in its reply received in May 1996, to various measures to ensure the timely payment of wages to workers: (i) the setting up of an inter-agency commission comprising the leading central economic and other officials and trade unions; (ii) the establishment of the State Labour Inspection Commission whose main tasks include the control over the application of legislative provisions on wage payment; (iii) a draft law "on amendments to the Ukrainian Code on Administrative Offences" to strengthen the sanctions against officials guilty of the delays; (iv) another act envisaged to provide for compensation to workers of partial loss of wages due to delays in payment; (v) adoption of timetables of liquidation of wage arrears both from the State and local budgets, in pursuance of the Order of the President of Ukraine of 23 March and 22 April 1996; (vi) Decree of the President of 5 April 1996 on certain measures to stabilize the financial situations of enterprises; and (vii) an instruction of the President published concerning the urgent measures to guarantee the timely payment of wages, under which a new regime should regulate the use of government financial resources in order to ensure the payment of wages without delays. The Government further indicates that measures have been taken to stabilize the financial situation of coal mines, and that the payment of unpaid wages of scientific staff of the institutions of the National Ukrainian Academy of Sciences in Kharkov region for the months of June-September 1995 was executed in full in 1995.

As regards the Committee's earlier comment on *Article 3 of the Convention* concerning the prohibition of the payment of wages in the form of promissory notes, the Government has supplied the text of the Decree issued by the President of the Ukraine on 14 September 1994, No. 530/94, concerning the issuing and circulating of promissory notes to cover the mutual debts of entrepreneurs and enterprises, and states that it does not allow such payment in the case of payment of wages. It also indicates that section 23 of the Act on Payment of Wages of 24 March 1995 prohibits the payment of wages in the form of promissory notes as well as in other non-cash forms including bills of exchange.

The Committee takes due note of the information as well as the text of the Act on Payment of Wages of 24 March 1995. It however notes that some of the workers' organizations mentioned above submitted their comments several months after the Government's reply. This appears to signify that the situation has not improved in spite of the measures indicated by the Government.

The Committee recalls that the present problem concerns the implementation in practice of the national labour legislation which gives effect to the Convention. It again emphasizes that the effective application of the Convention, through the national provisions giving effect to it, should comprise three principal aspects: supervision, appropriate penalties to prevent and punish infringements and steps to make good the prejudice suffered. The Committee urges the Government to take all possible measures to ensure the regular payment of wages, and requests it to report on them and their effects, including for instance, extracts from official reports that show the details of investigations made, infringements observed and penalties imposed. It asks the Government to indicate in particular the manner in which section 34 of the 1995 Act on Payment of Wages (on the compensation of workers for losses of part of their wages resulting from delays in its payment) is applied in practice, and whether courts of law or other tribunals have given decisions concerning the regular payment of wages.

[The Government is asked to report in detail in 1997.]

Venezuela (ratification: 1982)

The Committee notes that the Governing Body, at its 267th Session (November 1996), entrusted to a tripartite committee the examination of a representation made by the Venezuelan Workers' Confederation (CTV), the Single Central Organization of Workers of Venezuela (CUTV), the General Confederation of Workers of Venezuela (CGT), the Confederation of Autonomous Trade Unions (CODESA), and the National Trade Union of Public Employees and Officials of the Judiciary and of the Council of the Magistracy (ONTRAT) under article 24 of the Constitution, alleging non-observance by Venezuela of certain Conventions including Convention No. 95.

Pending the adoption by the Governing Body of the conclusions and recommendations of the above committee, the Committee is addressing a direct request to the Government concerning certain provisions of the Organic Labour Act of 20 December 1990 which are not the subject of the above representation.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belarus, Djibouti, Dominica, Dominican Republic, Libyan Arab Jamahiriya, Madagascar, Nicaragua, Russian Federation, Saint Lucia, Sierra Leone, Solomon Islands, Venezuela, Yemen, Zaire.***

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Pakistan (ratification: 1952)

The Committee notes that the report provided by the Government contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> *Part II of the Convention.* 1. The Committee notes the information provided by the Government in reply to its earlier comments. The Government states, as in its previous reports since 1987, that the provincial governments have been urgently asked for their views and comments on the draft Rules under the Fee-Charging Employment Agencies (Regulation) Act, 1976, and that every effort is being made to accomplish this work. The Committee

observes, however, that the Act has not yet been brought into operation. With reference to the comments the Committee has been making over a number of years on the same subject, it trusts that the Government will not fail to take the necessary measures with a view to bring the Act into operation in the nearest future in order to give legislative effect to the requirement of the Convention concerning the abolition of fee-charging employment agencies "within a limited period of time", but not "until a public employment service is established" *(Article 3 of the Convention).*

2. In its previous comments, the Committee noted the observations made in October 1993, and reiterated in October 1994, by the All-Pakistan Federation of Trade Unions stating that effective measures should be taken regarding supervision of agencies for recruiting workers abroad. It asked the Government to make its comments on the matters raised in these observations. The Government states in its reply that the present socio-economic conditions in the country do not permit it to abolish overseas employment-promoting agencies. The Government describes the arrangements made under the Emigration Ordinance of 1979 and Rules made thereunder for supervision of the Overseas Employment Promoters, the licensing system and the fixing of fees they are allowed to charge. The Committee notes this information. It would be grateful if the Government would continue to supply, in its future reports, any relevant information on the fee-charging employment agencies for which exceptions are allowed under *Article 5* of the Convention, as required under *Article 9* of the Convention (number of agencies concerned, scope of their activities, reasons for the exceptions, supervision of their activities).

3. The Committee reiterates its request to the Government to give a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from official reports, information regarding the number and nature of the contraventions reported, and any other particulars bearing on the practical application of the Convention, as required by *point V of the report form.*

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Ethiopia, Mexico, Netherlands.*

Convention No. 97: Migration for Employment (Revised), 1949

Brazil (ratification: 1965)

The Committee notes the information supplied by the Government.

Migrant workers in the MERCOSUR

With reference to the allegations of the Unique Workers Central (CUT) concerning the working conditions of Brazilian workers recruited by Brazilian employment agencies to work on construction sites in Argentina (La Plata and Quilmes), the Committee notes that the Government indicates that government investigations carried out on the spot have shown that the Brazilians worked in correct and adequate conditions. The Government adds that in the light of these results the CUT has withdrawn its observations.

The Committee requests the Government, in accordance with the provisions of *Article 1(b) of the Convention,* to continue to supply information on the movement of migrant workers and on any difficulties confronting them in their living and working conditions.

The Committee also notes the Government's statement to the effect that, despite increased flows of workers between the countries of the Southern Cone Common Market (MERCOSUR) and the concern expressed on this matter by governments and trade union organizations, to date there is no explicit form of cooperation between the immigration services of the region; each country administers its immigration services independently, in accordance with labour legislation. According to the Government, however, this matter will be discussed in MERCOSUR Subgroup 11, which deals with the employment and labour aspects involved in implementing an agreement. Furthermore, the Committee notes that the authorities concerned are studying, within the MERCOSUR framework, how to conclude an agreement allowing free circulation of persons among the member States with a view to implementing it in the year 2006.

The Committee requests the Government to continue to supply any information on the development of cooperation with the other members in regard to employment and migration services and, particularly, the results of the work done by MERCOSUR Subgroup 11, in application of *Articles 6 and 10 of the Convention*.

Misleading advertising

The Committee notes from the Government's report that the Brazilian legal system contains many constitutional and legislative provisions intended to suppress the various forms of misleading advertising, including those used in recruitment and employment of migrant and other workers. The Government refers specifically to the federal Constitution, which lays down in article 5, XIV, the right of access to information for all and provides legal measures to protect citizens against advertising of products, practices and services harmful to health or the environment (article 220, II). The Penal Code classifies deception among the offences set out in sections 206 and 207. The Government adds that, in order to solve the problem, the Ministry of Labour has taken measures to strengthen labour inspection of employment agencies in order to stamp out the practice of cheating workers with false promises.

The Committee requests the Government to supply copies of the labour inspection reports on the campaign against misleading advertising and on the penalties imposed on the authors or circulators of misleading advertising concerning emigration or immigration.

The Committee also draws the Government's attention to other points raised in a direct request.

Malaysia (ratification: 1964)

Article 6, paragraph 1(b), of the Convention. In its previous comments, the Committee noted that accident compensation coverage for foreign workers has been transferred from the Employees Social Security Scheme (governed by the Employees Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act, 1952) as of 1 April 1993, and that the level of benefits in case of industrial accident provided under the Workmen's Compensation Scheme is substantially lower than that provided under the Employees Social Security Scheme. Consequently, it had hoped that the Government would take the necessary steps in the near future to place foreign workers back under the Employees Social Security Scheme under the same conditions as nationals, thereby providing equal treatment under the law for compensation for industrial accidents. This case was also discussed during the 1996 session of the Conference Committee, which drew similar conclusions.

The Government points out in its report that certain categories of nationals are not covered under the Employees Social Security Act; that the States sending migrant workers to Malaysia endorse the removal of foreign workers from the Employees Social Security Act; and that foreign workers voluntarily consent to this arrangement when accepting work in Malaysia. Furthermore, it states that the Workmen's Compensation Act has been amended.

The Committee notes this information. It would first like to clarify that the principle of equality of treatment between nationals and non-nationals concerning workers' compensation as provided for under Article 6, paragraph 1(b), of the Convention, cannot be bargained away, even with the consent of the worker. As to the endorsement of the arrangement by the States sending migrant workers to Malaysia, only two types of arrangements are respectively provided for under *Article 6, paragraph 1(b)(i) and (ii)*, concerning on the one hand "the maintenance of acquired rights and rights in course of acquisition", and on the other hand "benefits or portion of benefits which are payable wholly out of public funds, and ... allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension". In the present case, these provisions are not applicable.

Secondly, the Committee points out that the amendment to the Workmen's Compensation Act merely increases the ceiling on lump-sum benefits and does not transform the benefit into a periodic payment equivalent to that provided under the Employees Social Security Act.

Therefore, in the light of the fundamental importance of the principle of equality of treatment concerning workers' accident compensation the Committee cannot but once again express the hope that the Government will take the necessary measures in the near future, such as by placing foreign workers back under the scope of the Employees Social Security Act in the same conditions as nationals, in order to ensure that the benefit foreign workers receive for work injury is equal to that paid to nationals.

See also the comments made in the observation concerning the application of Convention No. 19.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Cyprus, Dominica, Saint Lucia*.

Convention No. 98: Right to Organise and Collective Bargaining, 1949

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that its previous comments referred to:
>
> - the exclusion from the scope of the General Labour Act of agricultural workers (section 1 of the General Labour Act);
> - the absence of measures to protect workers who are not trade union leaders against acts of anti-union discrimination (*Article 1* of the Convention);
> - the absence of measures to protect trade union organizations against acts of interference by employers (*Article 2*); and
> - a lack of information on collective bargaining.
>
> Although the Committee notes that, according to the Government, the preliminary draft of the General Labour Act has taken into account the Committee's comments, it can only regret the fact that, despite the time which has elapsed, the text has not been adopted.

The Committee once again hopes that the new General Labour Act will protect all workers, including permanent and temporary agricultural workers, against acts of anti-union discrimination, will protect their organizations against acts of interference by employers, and will be coupled with effective and sufficiently dissuasive sanctions, and that the above Act will be approved in the near future. The Committee requests the Government to supply information in its next report on collective bargaining in the agricultural sector (collective agreements concluded and statistics) and on the progress made in the adoption of the preliminary draft text of the General Labour Act.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1952)

The Committee recalls that its previous comments referred to the following matters.

The Committee had requested the Government to provide the texts of all the provisions adopted with each report, and particularly those relating to wage policy and the fixing and adjustment of wages.

In this respect, the Committee notes that on 28 July 1995, the Government adopted Interim Provision No. 1079 containing supplementary provisions to the "Real Plan" (the economic stabilization plan adopted in 1994), governing the adjustment of wages and collective bargaining, and repealing all provisions in force on these questions up to the date of its publication. In this context, the Committee notes with interest that section 8(1) of the above Interim Provision provides that, as from 1 July 1995, the obligations and agreements based on the consumer index prices will instead be based on the index specified in each contract. Furthermore, section 10 provides that wages and other conditions of employment will continue to be determined or revised on the respective expiry date through free collective bargaining.

Nevertheless, the Committee notes that section 8(2) of Interim Provision No. 1079 provides that in the event that no substitute price index has been established, and where the parties have not agreed on one, a measure of the price index covering the whole nation shall be used as set out in regulations *to be issued by the Executive Authority*.

The Committee had also reminded the Government of the need to repeal the general provisions which are inconsistent with *Article 4 of the Convention*, and particularly section 623 of the "Consolidation of Labour Laws", as amended by Act No. 5584 of 26 June 1970 and Legislative Decree No. 229 of 28 February 1967, which confer extensive powers on the authorities to cancel collective agreements or arbitration awards that are not consistent with the rules set by the Government's wages policy.

In this respect, the Committee notes the information supplied by the Government concerning its intention to make collective bargaining a fundamental instrument of the rules of wages policy, and the indication that labour legislation in Brazil will have to undergo profound modifications in order to be in conformity with the constitutional principle of freedom of association and bargaining, as well as the new guidelines concerning the organization of production and work.

On this point, the Committee notes that on 10 August 1995 the Minister of Labour established a Permanent Commission on Labour Legislation, composed of national jurists specializing in labour law, the principal responsibility of which is to examine issues related to labour relations which, because of their importance and urgency require proposals and action by the Ministry of Labour, as well as to examine draft legislation, issue opinions on international Conventions and Recommendations and prepare reports for the ILO.

The Committee hopes that the above constitutes an appropriate framework within which the Government will adopt specific measures in the near future in order to encourage and promote, in both law and practice, the full development and utilization of machinery for voluntary negotiation between workers' and employers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements, as provided in *Article 4 of the Convention*.

The Committee regrets to note that the Government has not provided information on Bill No. 821 of 21 April 1991; it also notes Bill No. 1232-A/91 respecting collective bargaining. The Committee requests the Government to clarify the situation with regard to these Bills and to provide copies of them when they are adopted.

Cameroon (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention*. The Committee expresses the firm hope that sections 6(2) and 166 of the 1992 Labour Code, under which a fine of from 50,000 to 500,000 francs may be imposed on members responsible for the administration or management of a non-registered union, who act as if the union were registered, will be repealed in the near future so as to ensure that all workers, and particularly public employees, teachers, persons who form trade unions and trade union leaders, enjoy adequate protection against acts calculated to prejudice them by reason of union membership or because of participation in union activities. The Committee asks the Government to provide in its next report the texts of any measures taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1976)

The Committee notes the Government's report. The Committee also notes the discussions in the Conference Committee in 1996 and the report of the freedom of association mission undertaken from 7 to 11 October 1996, as requested by the Government in the Conference Committee.

The Committee recalls that for many years it has been emphasizing the need for public employees who are not engaged in the administration of the State to benefit from the right to collective bargaining. In this respect, the Committee notes with interest the information in the Government's report that a Bill has been submitted to the Congress of the Republic guaranteeing the right of collective bargaining to public employees.

The Committee expresses the firm hope that the Congress will adopt the Bill as soon as possible to bring the legislation into conformity with the Convention. The Committee requests the Government to keep it informed of any developments in this respect and to transmit the text of the Act in question as soon as it is adopted.

Furthermore, the Committee is addressing a request directly to the Government.

[The Government is asked to report in detail in 1997.]

Dominican Republic (ratification: 1953)

The Committee notes the Government's report and the observations from the National Union of Sugar Plantation Agricultural and Allied Workers (SINATRAPLASI), the Cane Cutters' Union of the Barahona Plantation (SIPICAIBA) and the Union of Plantation and Allied Workers of the Barahona Plantation (SITRAPLASIB), on the application of the Convention.

The Committee recalls that its previous comments concerned:

- the absence of collective agreements in export processing zones; and
- the requirement that, for trade unions to bargain collectively, their membership must include an absolute majority of the workers in an enterprise or of the workers employed in the branch in question (sections 109 and 110 of the Labour Code).

With regard to workers in export processing zones, the Committee notes with interest that the first four collective agreements were concluded in 1994 and that the tripartite committee for the harmonization of labour relations in export processing zones, established by an agreement of 22 April 1994, obtained the signature of eight labour agreements between enterprises and unions (the Government sent the texts). The Committee also notes with interest that the Secretary of State for Labour will continue to encourage the development of voluntary negotiation procedures with a view to regulating employment conditions in the export processing zones, through the above-mentioned tripartite committee, and will communicate any relevant changes in the legislation and practice.

With regard to the requirement of an absolute majority in order to bargain collectively, the Committee takes due note that, under section 111 of the Labour Code, when none of the unions in an enterprise has an absolute majority, the collective agreement may be concluded jointly by the unions representing each of the occupations, provided that an absolute majority is thus obtained. Notwithstanding the foregoing, the Government has again asked the workers' and employers' organizations for their opinion on the comments of the Committee of Experts.

In their observations, SINATRAPLASI, SIPICAIBA and SITRAPLASIB refer to anti-union acts (threats, intimidation, repression) against workers wishing to join unions or which participate in union activities, and the systematic refusal of the State Sugar Board to bargain collectively.

The Committee asks the Government to take appropriate steps to ensure that, in practice, sugar plantation workers have adequate protection against acts of anti- union discrimination and can conclude collective agreements on conditions of employment, and hopes that it will continue to report on progress made, in both law and practice, in the matters raised, towards full compliance with the provisions of the Convention.

Haiti (ratification: 1957)

The Committee notes the Government's report and recalls that in its previous observations it had asked the Government to indicate progress made in: (i) the revision of section 34 of the Decree of 4 November 1983, which confers on the Service of Social Organizations the power to intervene in the preparation of collective agreements; and (ii) the adoption of a specific provision providing for protection against anti-union discrimination at the time of recruitment as well as for the reinstatement of workers dismissed on grounds of legitimate trade union activities.

The Committee notes that the Government indicates in its report that section 34 of the Decree of 4 November 1983 is being amended and that the adoption of specific provisions providing for protection against anti-union discrimination is being reviewed. The Committee requests the Government to take the necessary steps to bring its legislation into conformity with the Convention, particularly by repealing section 34 of the Decree of 4 November 1983 and by adopting provisions guaranteeing workers adequate protection against acts of anti-union discrimination, coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application. The Committee requests the Government to keep it informed of any developments in this regard.

Indonesia (ratification: 1957)

The Committee notes with concern the gravity of the allegations of anti-union measures submitted to the Committee on Freedom of Association in Case No. 1773, and the conclusions of the Committee in March 1995 (see 297th Report, approved by the Governing Body at its 262nd Session), in March 1996 (see 302nd Report, approved by the Governing Body at its 265th Session) and again in November 1996 (see 305th Report, approved by the Governing Body at its 267th Session).

Under these conditions, the Committee is bound to repeat its observation concerning the following points:

— the need to strengthen the protection of workers provided by section 3(a) of the Guidelines for the Establishment and Building of a Worker Union in a Company (Decree No. 438/MEN/1992), against acts of anti-union discrimination at the time of recruitment or during the employment relationship (including dismissal and other forms of prejudicial action, such as transfers or demotions) accompanied by sufficiently effective and dissuasive sanctions *(Article 1 of the Convention)*;

— the need to adopt specific legislative provisions to protect workers' organizations against acts of interference by employers or their organizations with regard to their establishment, functioning or administration, and particularly against acts of interference intended to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, since Decree No. 438/MEN/1992 does not contain any provision to this effect *(Article 2)*;

— the restriction on free collective bargaining still imposed by Regulation No. 03/MEN/1993 on registered trade unions, whereby only workers' organizations covering at least 100 units at the plant level, 25 organizations at the district level and 5 organizations at the provincial level, or 10,000 members throughout Indonesia, may conclude collective agreements;

— the restrictions imposed on the right of public servants to bargain collectively.

Furthermore, the Committee once again requests the Government to provide a copy of Act No. 8 of 1974, which regulates the terms and conditions of employment of public servants.

The Committee reminds the Government that the ILO is at its disposal to provide technical assistance and expresses the firm hope that the Government will provide information in its next report on the measures which have been taken in practice, in the very near future, to bring its law and practice into conformity with the provisions of the Convention. It also requests the Government to indicate the measures taken, in particular: to strengthen the protection of workers against acts of anti-union discrimination, enforced by sufficiently effective and dissuasive sanctions; to adopt specific provisions to protect workers' organizations against acts of interference by employers or their organizations; and to eliminate the restrictions imposed on free collective bargaining.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Iraq (ratification: 1962)

The Committee takes note of the information supplied by the Government in its report.

It recalls that for several years it has been asking the Government to take specific measures to ensure that the Convention is applied, in view of:

- the lack of appropriate provisions to ensure the protection of workers against all acts of anti-union discrimination by employers at the time of taking up employment and during employment (*Article 1 of the Convention*);
- the lack of legislative provisions concerning the promotion of collective bargaining between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment (*Article 4*);
- the lack of provisions to guarantee that persons employed by the State, public enterprises and independent public institutions, who are not engaged in the administration of the State (such as teachers) and workers in the socialized sector have the right to be protected against all acts of anti-union discrimination and the right to negotiate their conditions of employment collectively (*Articles 1, 4 and 6*).

Articles 1 and 4. The Government indicates that the necessary measures have been taken to amend the Labour Code (No. 71 of 1987) in order to bring it into line with the provisions of *Article 1* of the Convention and that a new chapter entitled "Collective labour contracts" has been introduced into the Code. The Government adds that it will provide copies of the amendments as soon as they are adopted by the legislative authorities.

The Committee recalls that Act No. 71 of 1987 to issue the Labour Code and Act No. 52 of 1987 respecting trade union organizations contain no provisions to ensure the application of the Convention. The Committee is therefore bound once again to urge the Government to take specific measures at the earliest possible date to guarantee the protection of workers against all acts of anti-union discrimination, enforceable by sufficiently effective and dissuasive sanctions, and to encourage and promote the full development and utilization of machinery for voluntary negotiation of collective agreements in the private, mixed and cooperative sectors. In this respect, it asks the Government to supply, along with its next report, copies of the new provisions to which it refers so that the Committee may ascertain whether they are consistent with the requirements of the Convention.

Articles 1, 4 and 6. The Government indicates that persons employed by the State or by public enterprises and independent public institutions, other than those engaged in the administration of the State (such as teachers) and workers in the socialized sector have the right to be protected against all acts of anti-union discrimination and to negotiate their terms and conditions of employment collectively, in accordance with the laws and regulations which apply in enterprises and establishments where such workers are employed.

The Committee recalls that Act No. 150 of 1987 respecting public servants does not contain specific provisions guaranteeing that public employees enjoy protection against anti-union discrimination and granting them the right to negotiate their terms and conditions of employment collectively. It therefore asks the Government to provide with its next report copies of all the laws and regulations to which it refers, together with information on how negotiations are conducted in practice in the above-mentioned establishments (number of agreements concluded, number of workers covered, etc., if any).

Liberia (ratification: 1962)

The Committee notes with regret that for the sixth year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that no measures have been taken to eliminate the discrepancies between the national legislation and the Convention.
>
> In the circumstances, the Committee can only recall its comments of the last few years which concern the following points:
>
> 1. *Article 1 of the Convention*. The provisions of the national legislation are insufficient to guarantee workers adequate protection, accompanied by sufficiently effective and dissuasive sanctions, at the time of recruitment and during the employment relationship.
>
> 2. *Article 2.* The present provisions are not sufficient to ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations.
>
> 3. *Articles 4 and 6.* The possibility of collective bargaining is not offered to employees of state enterprises and other authorities, since these categories are excluded from the scope of the Labour Code, whereas under Article 6 of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Morocco (ratification: 1957)

The Committee notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1687 and 1691, both of which were examined most recently in November 1996 (see the 305th Report approved by the Governing Body at its 267th Session), in which the Committee on Freedom of Association expresses its grave concern at the gravity of the allegations of anti-union discrimination and interference in trade union activities brought before it.

In these conditions, the Committee is bound to repeat its observation concerning the following points:

- the need to strengthen the legislative provisions contained in Dahir No. 1-58-145 of 29 November 1960 with a view to guaranteeing in law and in practice adequate protection to workers against acts of anti-union discrimination, both at the time of recruitment and in the course of the employment relationship (including all measures which might prejudice workers, such as transfers, downgrading, involuntary retirement) supported by effective sanctions of a sufficiently dissuasive nature *(Article 1 of the Convention)*;
- the need to adopt specific legislative measures to protect organizations of workers against acts of interference by employers or by organizations of employers, in particular acts which are designed to promote the establishment of workers' organizations under the domination of an employer, or to support workers' organizations by financial or other means *(Article 2)*;
- the need to adopt appropriate measures to encourage and promote the development and utilization of machinery for voluntary negotiation of collective agreements between employers and workers' organizations with a view to the regulation of terms and conditions of employment.

The Committee recalls that the question of anti-union discrimination and of the poor functioning of the machinery of collective bargaining for the purpose of determining terms and conditions of employment has been the subject of its comments for several years and notes with regret that no tangible progress has been made. Emphasizing the importance that it attaches to the application of this fundamental Convention and recalling that the ILO is at the disposal of the Government to provide any necessary technical assistance, the Committee once again requests the Government to indicate the real progress which has been made in law and practice in this respect. It requests it in particular to specify whether the draft Labour Code and the draft Law on the Settlement of Collective Disputes, to which the Government referred in its previous report, have been adopted and, if so, to indicate the extent to which they secure adequate protection for workers' and employers' organizations against acts of anti-union discrimination and interference and promote free and voluntary collective bargaining without interference by the public authorities.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Pakistan (ratification: 1952)

The Committee notes the information provided by the Government in its report.

The Committee's previous comments referred to discrepancies between national legislation and the Convention on the following points:

- Limitations on free collective bargaining in the banking and financial sector (sections 38A to 38I of the Industrial Relations Ordinance (IRO), 1969) contrary to *Article 4 of the Convention*.
- Denial of the rights guaranteed by *Articles 1, 2 and 4* for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance 1980).
- Lack of sufficient legislative protection for workers dismissed for their trade union membership or activities.

1. The Government reiterates in its report that the procedure used by the Wage Commission for banks and financial institutions is intended to provide workers with the opportunity to bargain with the Commission without any hesitation instead of bargaining directly with the employer. In addition, the Government merely reiterates its previous statement to the effect that workers allowed to bargain freely with their employers form their own unions and put one impediment after another in the shape of nagging demands on a recurring basis. They also damage discipline and efficiency since they have too many office- bearers at an overwhelming majority of the operational units. According to the Government, this is aggravated by the fact that officers can also form associations under the law and that the branch managers and officers at grade-1 level are members and so have divided loyalties leaning more towards the interests of their associations. So, discipline amongst the staff and overall efficiency is deteriorating.

Moreover, the Government reiterates its view that, in institutions which rely on the deposits of the general public, to allow the right of collective bargaining would be tantamount to putting into jeopardy the trust given by individual depositors to banks and other financial institutions. The Government further indicates that the Wage Commission has recommended that staff unions of banks and financial institutions should not be allowed to negotiate wages and other fringe benefits and conditions of service as they are reviewed every three years by an independent Wage Commission set up by the Government. Accordingly, for these reasons, the Government indicates that it would not be advisable to change the status quo.

The Government states once again that the Wage Commission pronounces its awards after having considered all the relevant facts and circumstances of socio-economic importance and after giving patient hearings to the representatives of the concerned parties in order to achieve a consensus on all the issues raised by either party and the matters otherwise considered by the Commission. The Wage Commission issued its 7th Wage Award, to be effective from 1 January 1993, and has also given its views on staff union/management relations. This Award by the Wage Commission is not applicable, however, to banks and financial institutions in the private sector.

The Committee must once again recall that *Article 4* provides that measures appropriate to national conditions shall be taken *to encourage and promote* the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations. It has indicated that, in the first instance, voluntary collective bargaining should be encouraged *between the parties*. Any external administrative structure established should be referred to only when *both* parties agree and its purpose should be that of *facilitating* the conclusion of a collective agreement. It should not serve to impose a ceiling.

With regard to the Government's statement that this procedure used by the Wage Commission is not applicable to banks and financial institutions in the private sector, the Committee must stress once again that *Article 6* of the Convention only allows public servants engaged in the administration of the State to be excluded from its scope. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention, and therefore be able to negotiate collectively their employment conditions, including wages. In this connection, the Committee emphasizes that the mere fact that public servants are white-collar employees is not *in itself* conclusive of their qualification as employees "engaged in the administration of the State"; if this were the case, Convention No. 98 would be deprived of much of its scope (see 1994 General Survey on freedom of association and collective bargaining, paras. 200, 261 and 262).

The Committee must therefore once again ask the Government to reconsider the question of collective bargaining in the banking and financial sector so as to ensure the agreement of both parties to any settlement of terms and conditions of employment. It expresses the firm hope that the Government will be able to indicate the progress made in this regard in its next report and would once again ask the Government to supply a copy of the award of the Wage Commission which is actually in force.

2. As regards the denial of freedom of association and the right to bargain collectively for workers in export processing zones (EPZs), the Government reiterates its previous statement that the benefits that accrue to these workers are better than those provided to other workers. Moreover, there is only one EPZ that has been established in Karachi at present which employs fewer than 6,000 workers, 80 per cent of whom are women. Since the cultural climate in Pakistan is not in favour of unionization of female workers due to social taboos, those workers do not demand that trade union rights under the IRO, be restored to them. There is, however, no ban on their forming any association. The Government adds that the earlier report of the tripartite Task Force recommending that labour laws apply throughout the entire country without discrimination is under active consideration by the Cabinet Committee. The Committee expresses the firm hope that the provisions of this Convention will be applied to EPZs

and requests the Government to inform it of the Cabinet Committee's decision in this regard in its next report.

3. The Committee notes with regret that the Government has not provided its observations to the Committee's previous comments on a Supreme Court decision dated 11 August 1994 which severely restricts the right to judicial recourse of dismissed workers under section 25A of the IRO. In this judgement, the Supreme Court determined that "a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment is not a worker (as defined by the IRO) unless his dismissal, discharge, etc., had connection with or was in consequence of an industrial dispute or whose dismissal, discharge, etc., had led to such a dispute". The Supreme Court went on to hold that such persons were therefore not entitled to the remedy provided for under section 25A of the IRO.

The Committee would once again remind the Government that, in freely ratifying this Convention, it had undertaken, in accordance with *Article 1(2)(b)* to ensure the protection of workers against acts of anti-union discrimination calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities. The above court decision would appear to have the effect of blocking any legal recourse to workers dismissed for their trade union membership or activities if there is no industrial dispute pending or raised over such dismissals. The Committee requests the Government to take the necessary measures to ensure that the appropriate provisions of the IRO are amended so that dismissed workers have the possibility of recourse to legal proceedings to protect themselves against anti-union dismissals whether or not an industrial dispute is raised or pending over such dismissals. It further requests the Government to inform it in its next report of any progress made in this regard.

More generally, the Committee regrets to note that despite the undertaking of a direct contacts mission between a representative of the Director-General and the Government in January 1994, as well as the establishment of a tripartite Task Force on Labour which drew up recommendations very similar to those of the mission on amendments to be made to the legislation, the Government has still not taken the appropriate steps to give effect to the above-mentioned recommendations. The Committee therefore urges the Government to ensure that substantial progress is made in amending national legislation and practice concerning the issues raised by the Committee in the very near future.

Papua New Guinea (ratification: 1976)

The Committee notes the information supplied by the Government in its report.

The Committee had asked the Government to amend the national legislation which gives the authorities discretionary power to cancel arbitration awards or declare wages agreements void when they are contrary to government policy or national interest (section 42 of the Industrial Relations Act and section 52 of the Public Service Conciliation and Arbitration Act), contrary to *Article 4 of the Convention*.

The Committee notes that the Government states in its report that it has made a formal request to the ILO's multidisciplinary team in Manila to assist with the drafting of the country objectives for Papua New Guinea. The Government adds that it is hoped that the amendments to this legislation will be incorporated into the legislation during the forthcoming review of the legislation.

The Committee expresses the firm hope that the necessary amendments will be adopted at an early date to bring this legislation into conformity with the requirements of *Article 4* of the Convention. It asks the Government to supply information in its next report on any progress made in this regard.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the sixth year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next meeting and that it will contain full information on the matters raised in its previous observation which reads as follows:

> In its previous comments, the Committee recalled the importance of sufficiently effective and dissuasive measures to ensure the application in practice of basic legal standards prohibiting acts of anti-union discrimination.
>
> It recalls that section 3(2) of the Labour Regulations of 1960 (No. 15) provides that it is the duty of the Labour Commissioner to ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> The Government is requested to indicate, in its next report, the manner in which section 3(2) is applied in practice, including any statistics concerning the number of complaints of anti-union discrimination brought to the attention of the labour commissioner and whether any sanctions have been applied in such cases or compensation ordered for the worker who has suffered such acts of discrimination.

Sierra Leone (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation:

> *Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body have been received and that the document has just been forwarded to the Law Officers' Department. The Committee asks the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it has been adopted.
>
> *Article 4.* With regard to the right to collective bargaining of teachers, the Committee would request the Government to provide information in its future reports on any collective agreements covering teachers that have been concluded.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sudan (ratification: 1957)

Article 1 of the Convention. The need to guarantee workers protection against acts of anti-union discrimination.

The Committee notes with concern that the Government has not taken any measures to give effect to the recommendations of the Committee on Freedom of Association in Case No. 1688 concerning extremely serious acts of anti-union reprisals.

It also notes that a new complaint alleging measures of anti-union reprisals, including new cases of detentions of trade unionists and acts of violence against them, has been submitted to the Committee on Freedom of Association by the Sudan Workers' Trade Unions' Federation in May 1995 (Case No. 1843).

Under these conditions, the Committee expresses the firm hope that the Government will take the necessary measures as soon as possible to guarantee the protection of workers against acts of anti-union discrimination in both law and practice by amending sections 23 and 24 of the Trade Union Act of 1992.

Article 4. The Committee recalls the importance that it attaches to the principles of voluntary negotiation contained in this Article and requests the Government to amend section 16 of the Industrial Relations Act of 1976 to limit the powers of the Minister to refer a collective dispute to compulsory arbitration to cases of disputes in the essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety and health of the whole or part of the population.

The Committee requests the Government to indicate any progress that has been made in these matters in its next report.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Sweden (ratification: 1950)

The Committee notes the information supplied in the Government's reports and the comments made by the Swedish Confederation of Professional Employees (TCO).

The Committee notes the Government's indication that the drafting committee appointed in 1993 to propose a new system of health and work injury insurance received new terms of reference to draft a scheme of universal illness insurance organized by the State, and not merely to reappraise its existing insurance system. The Committee was also to analyse the conditions in which supplementary insurances providing compensation over and above the universal illness insurance satisfied requirements of efficiency and fairness, so that insurances of this kind would not tend to augment the cost of universal illness insurance if current rules of reduction were abolished and the labour market parties assumed full responsibility for the supplementary insurances. The Committee's analysis was to include the rules of reduction existing in present-day sickness allowance insurance, whereby compensation out of national insurance is reduced in cases where the insured receives compensation from the employer or from contractual insurance above a certain level. The Committee presented its final report in 1996. It has been circulated for comment and there has as yet been no decision by the Government or Parliament concerning the proposal.

The Committee notes that, according to the TCO, the prohibition on agreements made in 1991 was still in effect and the Government's Proposition 1995/96:69 lowers the level of compensation to 75 per cent and requires that no fundamental deviations from the new benefit levels for the period of sick pay arise during the negotiations and conclusion of any agreements. The TCO concludes that these changes represent a continued encroachment on the right to negotiate freely.

In its reply, the Government indicates that the 1995 Bill proposed retaining the so-called reduction rules pending proposals from the Sickness and Work Injuries Committee. In the meantime, the Government indicates that it was assumed in the Bill that collective agreements would not entail any deviations of principle from the new compensation rate for the sick pay period, which is 75 per cent. Following the introduction of the Bill, the National Insurance Act and the Sick Pay Act were amended with effect from 1 January 1996, thus introducing a uniform compensation rate of 75 per cent of qualifying income in respect of sickness allowance and sick pay from the employer.

The Government asserts that the amendment of the health insurance compensation rate does not mean that the parties are forbidden to conclude agreements on full compensation, nor is it to be equated with any such prohibition. The Government has merely stated that, pending proposals from the Sickness and Work Injuries Committee, it anticipates that collective agreements will not include deviations of principle from the new compensation rate. The Government adds that this pronouncement does not contain anything which can be construed as a new "threat" of legislation in the event of agreements deviating from the compensation levels and concludes that it has only been trying to persuade the social partners to have regard voluntarily to major economic and social policy considerations and the general interest, as the Committee had requested.

The Committee notes the information and explanations provided by the Government, in particular the Government's indication that *it is not threatening legislation* in the event of agreements deviating from the new compensation levels *but merely trying to persuade the social partners* to have regard voluntarily to major economic and social policy considerations, as the Committee had emphasized in its previous comments. Nevertheless, the Committee requests the Government to provide along with its next report a copy of Proposition 1995/96:69, as well as any proposals made by the Sickness and Work Injuries Committee concerning the "reduction rules". In particular, it requests the Government to indicate the manner in which these reduction rules are to be applied and whether they might indirectly interfere with the collective bargaining process by invalidating any gains made through negotiation. It further requests the Government to provide information on any new collective agreements which might have a bearing on this matter.

Turkey (ratification: 1952)

The Committee takes note of the information provided in the Government's latest report, as well as the comments made by the Confederation of Turkish Trade Unions (TURK-IS) and the Turkish Confederation of Employer Associations (TISK). It further notes the statement made by the Government representative at the Conference Committee in June 1996 and the discussion which took place thereafter. Finally, the Committee notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1810 and 1830 (303rd Report of the Committee, approved by the Governing Body at its 265th Session (March 1996)).

1. *Articles 1 and 3 of the Convention.* The Committee notes the comments made by TURK-IS that, although section 31 of the Trade Unions Act appears to provide adequate protection against anti-union discrimination, the lack of job security and of effective sanctions render this provision insufficient. In this regard, the Committee notes the Government's statement that once the studies aimed at ensuring conformity with the provisions of Convention No. 158, recently ratified by Turkey, have been concluded, it will provide the Committee with the necessary information on the issue. The Committee would ask the Government to indicate in its next report the progress made in this regard, as well as any other measures taken to guarantee workers more effective protection against acts of anti-union discrimination.

2. *Article 4.* With regard to the dual criteria for determining representative trade unions for collective bargaining purposes, the Committee notes the statement made by the Government representative at the 1996 Conference Committee to the effect that endeavours to abolish this requirement had failed because of the objections raised by TURK-IS and TISK. The Government representative added, however, that efforts would continue in this direction and that, with the establishment of the tripartite Economic and Social Council, the question of criteria for selecting representatives would be debated extensively and brought to a satisfactory conclusion. In its latest report, the Government has indicated that a Bill to amend Act No. 2822 on collective agreements, strikes and

lockouts, proposes lifting the stipulation that a trade union represent at least 10 per cent of workers in a branch in order to have bargaining status. The Committee notes this information and requests the Government to indicate, in its next report, any progress made in reducing this dual requirement and thus promoting the fuller development and utilization of machinery for the voluntary bargaining of collective agreements in accordance with *Article 4*.

3. As concerns the denial of collective bargaining rights of public servants not engaged in the administration of the State, the Committee notes the statement by the Government representative at the 1996 Conference Committee that efforts were being made to draft legislation to regulate the trade union rights of public servants in accordance with the new amendments in the Turkish Constitution and the corresponding principles envisaged in Convention No. 151. In its latest report, however, the Government states its understanding, based on the French version of the text, that this Convention is not applicable to state officials. In this regard, the Committee would draw the Government's attention to paragraph 200 of its 1994 General Survey on freedom of association and collective bargaining where it has indicated that the distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided by the Convention. Noting from the Government's first report under Convention No. 151 that a Bill regulating the trade union rights of civil servants generally has been prepared and submitted to the Turkish Grand National Assembly, the Committee hopes that this draft legislation will contain provisions which are in accordance with Convention No. 98.

4. As regards its previous comments concerning compulsory arbitration under section 33 of Act No. 2822, the Committee is pursuing this matter in its examination of the application of Convention No. 87 by Turkey.

5. The Committee would once again remind the Government that ILO technical assistance is available if it so desires to facilitate overcoming the obstacles to the full implementation of the Convention noted above.

Ukraine (ratification: 1956)

The Committee notes the communication from the Trade Union Federation of Ukraine and the information supplied by the Government in this connection.

The comments of the above Federation concern the legality of sections 17, 18 and 19 of the Law of 1 July 1993 on collective treaties and agreements, which establish the financial liability of trade union representatives, and sanctions for failure to comply with collective treaties and agreements and for breaches of collective bargaining procedures. The Federation holds that these provisions constitute anti-union discrimination.

In its report, the Government indicates that the Law establishes equality between the parties and provides for administrative and disciplinary sanctions for both workers and employers for non-observance or violation of collective treaties and agreements or breaches of collective bargaining procedures. Decisions concerning sanctions are taken by the courts. According to the Government, these provisions are not in breach of the Convention.

In the Committee's opinion, the provisions in question, which place workers and employers on a par and serve to strengthen the collective bargaining process, do not impair application of the Convention.

Yemen (ratification: 1962)

The Committee notes the information supplied by the Government in its report.

The Committee notes with regret that, despite the assurances given by the Government in previous reports and to the Conference Committee in June 1993 that it was undertaking a revision of the national legislation with a view to bringing it into conformity with the requirements of the Convention, the Government confines itself in its report to repeating the information provided previously that the draft texts of the new Labour Code and a Bill respecting trade unions contain provisions to give effect to the Convention.

In these circumstances, the Committee is bound yet again to recall that its comments have dealt with the following points:

(a) the need to adopt specific and appropriate provisions, accompanied by effective and sufficiently dissuasive sanctions, to guarantee explicitly the protection of workers against any act of anti-union discrimination by employers, both at the time of recruitment and during employment, and the protection of workers' organizations against acts of interference by employers, contrary to *Articles 1 and 2 of the Convention*;

(b) the need to adopt appropriate measures to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements; and

(c) the need to amend the provisions governing the compulsory registration of collective agreements and the possibility of their cancellation in the event that they do not conform with the security and/or economic interests of the country (sections 68, 69 and 71 of the Labour Code of 1970).

The Committee firmly hopes that the Government will make every effort to ensure that the new Labour Code, the draft text of which was prepared with the technical assistance of the ILO, as well as the new Bill respecting trade unions, will be adopted in the very near future, so that its legislation can be brought into conformity with the requirements of the Convention. It recalls that the technical assistance of the ILO is at its disposal and requests the Government to *indicate clearly* in its next report at what stage of adoption the two above-mentioned draft texts find themselves to be (i.e. awaiting parliamentary debate or approval, or alternatively approval from the Executive or promulgation by the President).

Zaire (ratification: 1969)

The Committee notes the Government's report and the conclusions of the Committee on Freedom of Association in Cases Nos. 1818 and 1833, approved by the Governing Body in November 1995 and March 1996 respectively.

Articles 1 and 2 of the Convention. The Committee notes the information communicated by the Government that sections 228 and 229 of the Labour Code (Legislative Order No. 67/310 of 9 August 1967) provide workers with adequate protection against all acts of discrimination liable to hinder freedom of association in respect of their employment and compels workers' and employers' organizations to refrain from any acts of interference by each other in their establishment, functioning or administration. While noting that section 49 of the Labour Code provides that termination without a valid reason of a contract of indeterminate duration gives the worker the right to compensation, the Committee requests the Government once again to provide information on how protection is provided in practice against acts of anti-union discrimination during employment and protection against acts of interference by an *individual employer*, and, specifically, to supply a copy of any judicial decision handed down in these matters.

In addition, the Committee notes with concern that the cases examined by the Committee on Freedom of Association relate, inter alia, to allegations of acts of anti-union discrimination and acts of interference in union activities.

Recalling that in its previous reports the Government had indicated that a draft Labour Code was being drawn up, the Committee requests the Government to indicate in its next report whether the Labour Code has been amended and, if so, to send it a copy of the text.

Article 4. The Committee notes that the allegations in the aforementioned cases, examined by the Committee on Freedom of Association, relate specifically to the refusal to undertake negotiations with the staff of a public service (Case No. 1833) and the refusal to grant certain representative trade unions access to a joint commission responsible for salary negotiations in the public services in general and the health services in particular (Case No. 1818). The Committee, like the Committee on Freedom of Association, requests the Government to take steps to encourage and promote machinery allowing for the negotiation of conditions of employment between the public authorities and workers' organizations, including in the public sector enterprises. It asks the Government to keep it informed in this regard.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Azerbaijan, Brazil, Bulgaria, Colombia, Comoros, Estonia, Guinea, Honduras, Kyrgyzstan, Latvia, Lebanon, Lesotho, Lithuania, Namibia, Netherlands, Rwanda.*

Information supplied by *Italy* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

A request regarding certain points is being addressed directly to *Zimbabwe.*

Convention No. 100: Equal Remuneration, 1951

Afghanistan (ratification: 1969)

1. The Committee observes that the application of this Convention is linked inextricably with women's right to equality of opportunity and treatment in employment more generally. In this connection, the Committee refers to its observation under Convention No. 111, which should be read together with this observation.

2. The Committee notes the information provided in the Government's reports, which were received on 26 June and 8 July 1996 respectively, including the information provided by the Government concerning the criteria used to classify civil servants and workers, and that concerning the determination of additional remuneration, such as overtime pay, travelling expenses, pension rights, food, and consumer goods.

3. In its previous comment, the Committee noted the Government's reliance on section 9 of the Labour Code (which stipulates "equal wages for equal work"), whereas

the Convention encompasses the broader principle of equal remuneration for work of equal value. Observing that the Government's reports continue to deny any discrimination in the terms and conditions of employment of men and women and refer to section 75 of the Code (containing the criteria for wage determination) without demonstrating how the broader concept is applied, the Committee asked the Government to consider amending the Labour Code so as to reflect fully the principle of the Convention. In its report the Government states that, on the instruction of the competent authorities, the Labour Code is to be amended, and that in any such amendments, the matters raised by the Committee will be taken into consideration and will be reported to the Office. The Committee hopes that the necessary action will be taken to amend the Labour Code in line with the scope of the Convention and asks the Government to provide information on further developments.

Angola (ratification: 1976)

The Committee notes that as the Government's report gives no further particulars in reply to the earlier direct requests, the Committee must return to the question in a new direct request. It hopes that the Government will not fail to take the necessary steps and supply the information requested.

Austria (ratification: 1953)

The Committee notes the information provided by the Government in its report.

1. In previous comments, the Committee had noted the Government's statement that, given the principle of autonomy of collective bargaining in the country, neither the public authorities nor the legislative bodies intervened in negotiations but that the legality of provisions in collective agreements could be challenged by the parties in individual litigation. The Committee notes with interest from the Government's report that, in a resolution of 14 September 1994, the Supreme Court examined, for the first time, the question of indirect discrimination against women and the resulting legal consequences. The matter concerned a collective agreement which contained provision for two categories of temporary workers whereby the determining criterion for classification in the higher category was "physical capability". The Supreme Court established that this criterion was excessively to the advantage of men. As there was no classification criterion based on capacities more typical of women workers (such as manual dexterity), the Court concluded that this lack of balance in the assessment criteria constituted indirect discrimination against physically less capable women and was thus an infringement of section 2(2) of the Equality of Treatment Act, 1979, as amended. The relevant wage category provision of the agreement was consequently ruled to be partially invalid. The Committee asks the Government to continue to provide information on the practical application of the Act.

2. The Committee is also addressing a direct request to the Government on other matters.

Barbados (ratification: 1974)

Further to its previous observations concerning differentials in the wages paid to men and women in the sugar industry, the Committee notes the Government's indication that it will provide detailed information on the results of the job evaluation exercise, which was due to be completed in the sugar industry early in 1996. The Committee also notes from the Government's report that the Bureau of Women's Affairs has embarked upon a renewed programme for addressing gender-related issues, including revising the

National Policy Statement on Women. The Committee requests the Government to furnish detailed information in its next report on any initiatives taken in that context that assist in promoting the application of the Convention.

Canada (ratification: 1972)

The Committee notes the detailed information supplied by the Government in its report and the accompanying documentation.

1. *Article 1 of the Convention. Quebec.* The Committee notes with interest that section 137 of the Charter of Human Rights and Freedoms — which was not compatible with the requirements of Article 1(a) since it allowed discriminatory distinctions to be made between male and female workers with regard to employment retirement schemes and social benefits — was repealed on 13 June 1996 and replaced by a new section (20.1) which reads as follows: "*In an insurance or retirement pension contract, a social benefit, retirement, pension or insurance scheme or a global pension or insurance scheme, a distinction, exclusion or preference based on ... sex ... is deemed non-discriminatory when its use is legitimate and the grounds on which it is based constitute a risk determining factor based on actuarial data.*" Henceforth, distinctions, exclusions or preferences are deemed non-discriminatory *only* where they relate *objectively* to the risk insured.

2. The Committee is addressing a request directly to the Government on other points.

Côte d'Ivoire (ratification: 1961)

The Committee notes with satisfaction that a new Labour Code has been adopted and enacted by Act No. 95-15 of 12 January 1995 and that the ILO's comments concerning, among other matters, the amendment of section L-80 of the former Code and the inclusion in the new Code of a provision to guarantee equal remuneration for work of equal value for workers of both sexes, have been fully taken into consideration.

The Committee is addressing a request directly to the Government concerning other points.

Cyprus (ratification: 1987)

The Committee notes the information contained in the Government's reports.

1. The Committee recalls that, in response to a request of the Government for assistance in implementing the Convention, missions were undertaken in 1991 and in 1992 by officials of the International Labour Office. The Committee notes with satisfaction that the sex-based wage differentials in the collective agreements for the printing industry, the electrical contractors industry and the leather (luggage) industry were eliminated in the 1992-93 bargaining round, and that this equality has been maintained in the 1994-95 round of negotiations. The Committee also notes with interest that considerable progress was made towards eliminating wage discrimination on the basis of sex in the clothing and metal goods industries during the 1995 round of negotiations for the 1995-1997 (three-year) collective agreements concluded for those industries. In both of these industries, workers are now classified by skill and job type and the minimum pay rates and pay increases are specified without reference to the sex of the worker. As concerns other industries (footwear, soft drinks, construction and woodworking industries), the Committee notes with interest from the Government's report that some progress has been made towards eliminating wage discrimination. The Committee is particularly encouraged that progress has been made in spite of increasing

economic problems which have caused a relatively low rate of improvement in the conditions of work. It hopes that the Government will continue to provide information on further developments in these sectors.

2. The Committee notes that the Tripartite Labour Advisory Board reviewed, in a general discussion, the recommendations made by the Office following the above-mentioned missions and set up, in February 1994, a tripartite technical committee to study them in detail, as well as the proposals submitted by the employers' and workers' organizations at the Board's general discussion. The Board examined the report of the technical committee in December 1995 and decided that further consultations, chaired by the Minister of Labour and Social Insurance, should take place between the social partners concerning the practical measures to be taken to implement further the Convention. The Committee hopes that the Government will be in a position to furnish details in its next report on the strategies determined through these consultations.

3. The Committee notes from the statistical data supplied that even though the wage differential between men and women is still high, it has been narrowing continuously. Please continue to furnish statistical data illustrating the wage gap in future reports.

Germany (ratification: 1956)

The Committee notes the information provided by the Government in its report and attached documents.

1. In its previous observations, the Committee has referred to "light wage groups" (*leichtlohngruppen*) which originated as explicitly female wage groups. The Committee noted that the wage classifications of women and men in a number of collective agreements tended to be differentiated mainly or solely according to the criterion of "physically light" versus "physically heavy" work, thus perpetuating the former wage differentiation which had been made expressly on the basis of gender. The Committee had noted that the most recent jurisprudence of the Federal Labour Court ensures that a higher classification can be obtained for jobs which, while physically lighter, involve mental and nervous strain; and that "physically arduous work", which is better paid, also includes jobs which involve not only muscular but other strain on human beings which can result in physical reactions. Accordingly, the Committee had asked the Government to provide information on the extent to which measures are being taken, to ensure that job evaluation and classification include criteria which are associated more often with the work performed by women, particularly in respect of those collective agreements where wages are differentiated mainly or only through the application of the criterion of "light" versus "heavy" work.

2. The Committee notes that the tenth report of the federal Government on the nature, scope and outcome of the action taken in respect of Article 119 of the EEC Treaty on Equal Pay for Men and Women (report to Parliament No.13/3120 of 28 November 1995) indicates that the situation has not changed since 1992 when the ninth such report was presented: out of a total of 268 industrial collective agreements scrutinized, 27 still contain "light wage groups". The Committee notes that on average, the remuneration in "light wage groups" is 2.8 per cent less than that paid for physically heavy unskilled work. The Government indicates that the number of persons classified into "light wage groups" (approximately 40,000 women and 8,000 men according to 1990 statistics) constitutes less than 0.6 per cent of the approximately 8.4 million workers employed in the processing industries at that date. According to the Government, these figures indicate that the problem is now of minor practical importance.

3. The Committee notes that, according to the Government, the lack of change in the situation means that further efforts will have to be made by the parties to collective agreements in areas where such agreements still focus almost exclusively upon the degree of physical effort for the purposes of classifying forms of unskilled work. The Government also points out, however, that the mere existence of "light wage groups" in collective agreements provides no indication of whether or not women's work is actually undervalued in individual branches of industry; and that this is supported by the fact that both men and women are to be found in these wage groups, even though the proportion of men is much smaller. The Government does state, none the less, that if collective agreements were also to refer explicitly to sensory and nervous or similar mental strain, more so-called women's jobs would probably be classified in higher wage groups (as these factors are already generally considered to constitute "physically arduous jobs" for the purposes of pay classification criteria following the 1992 ruling of the Federal Labour Court, referred to above). While noting that any rulings of tribunals which are of practical importance are published and subscribed to by the employers' and workers' organizations, the Committee hopes that the Government will pursue specific measures to encourage the social partners to take account of such rulings. It looks forward to receiving information in this connection in the Government's next report.

India (ratification: 1958)

The Committee notes the information contained in the Government's report.

1. For some years, the Committee has sought to encourage the Government to strengthen the enforcement of the Equal Remuneration Act 1976. Comments made by the Centre of Indian Trade Unions had pointed to shortcomings in the implementation of the legislation and studies undertaken in the late 1980s by the Ministry of Labour on the socio-economic conditions of women confirmed that the Act, as well as the Minimum Wages Act 1948, was circumvented frequently by employers. The Committee has also tried to encourage the Government to consider widening the scope of section 4 of the Act, which limits equal pay to men and women performing the same work or work of a similar nature for the same employer.

2. The Committee notes with interest from the Government's report that inspections carried out in 1993 and in 1994 succeeded in rectifying more than 3,500 violations of the Equal Remuneration Act at the central level in each of those years. The data provided in respect of the states and union territories disclose fewer violations of the Act detected through inspection in 1993 and in 1994 than in previous years, although it is not clear whether the figures provided include information for all jurisdictions as there have been evident difficulties in collecting complete data in the past. The Committee recalls that, in order to facilitate the prosecution of violations under the Act, the Government amended section 12 of the Act in 1987 to empower the courts to try any offence punishable under the Act on the basis of a complaint made by the aggrieved person or by a recognized social welfare institution or organization, in addition to prosecution by governmental authorities. The central Government has recognized four social organizations for this purpose but so far, only six states or union territories have recognized such organizations, the names of which have been supplied in the report. The Committee notes, moreover, that the four organizations recognized at the central level have demanded that additional powers be conferred upon them to inspect the premises, documents and other material of employers and that the views of the state governments are being obtained on this matter. The Committee hopes the Government will make every effort to encourage all states and union territories to recognize social organizations

for the purpose of making complaints under the Act and that consideration will be given to granting sufficient powers to these organizations to enable them to play an effective role in enforcing the Act.

3. As there have remained outstanding for some years a number of questions concerned with the effective application of the Convention, both in terms of the provisions of the Equal Remuneration Act and as concerns its implementation in practice, the Committee suggests that the Government have recourse to the technical advisory services of the Office, with a view to facilitating progress in this area and in order to enable the Committee to make a better assessment of the extent of application of the Convention.

Israel (ratification: 1965)

1. The Committee notes with satisfaction the information to the effect that the Male and Female Workers' (Equal Pay) Act, 1964, has been replaced in 1996 by a new Equal Pay for Male and Female Workers Act which provides for equal remuneration for "work of equal value" instead of "the same work", and includes, in the definition of "remuneration", all forms of payment to the worker, including reimbursement for expenses incurred in the course of seeking employment. The Committee hopes that it will receive shortly a copy of this Law which, according to the Government, is in the process of being translated.

2. The Committee raises other points in a request addressed directly to the Government.

Jamaica (ratification: 1975)

The Committee notes with regret that for the fifth consecutive time the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its 1991 observation, the Committee had noted that the Minimum Wage (Printing Trade) Order, 1973, which had provided for sex-differentiated job categories and pay scales had been revoked by the Minimum Wage (Printing Trade) Order, 1989, which had set a single rate of pay for an unskilled worker. However, in other respects the Order had simply removed explicit reference to the sex of the worker from various other categories, while at the same time maintaining both the former definitions of those categories and differentials in the respective increased minimum rates which appeared to correspond to those laid down in the 1973 Order. In the absence of any indication that measures were taken either to evaluate and compare jobs in categories which were formerly sex-denominated by applying non-discriminatory criteria or to ensure that those jobs were open to both sexes, the Committee had been forced to conclude that the wage distinctions based on sex in the 1973 Order had been maintained in the 1989 Order, despite the introduction of neutral language. The Committee had requested the Government to supply detailed information on the measures taken, either alone or in cooperation with the social partners, to ensure the application of the principle of the Convention in the printing trade as well as in other industries, such as the garment-making trade, where the Committee had previously noted that distinctions based on sex had apparently played a role in establishing differential minimum wage rates.
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> At the Conference Committee in 1991, the representative of the Government stated that the tripartite Minimum Wage Advisory Commission would review the Minimum Wage Orders for the printing and garment industries before the end of 1991 and, in doing so, would take account of the Committee's comments regarding the application of the Convention. He assured the Committee that a comprehensive report, as well as copies of the new Orders, would be furnished as soon as this work had been completed.

The Committee notes that no further reference is made in the report of the Government to the review of the above-mentioned Orders. The Committee trusts that the Government will indicate, in the near future, that it has taken the necessary action to ensure conformity with the provisions of the Convention.

2. In its previous direct request, the Committee had pointed out that section 2 of the Employment (Equal Pay for Men and Women) Act, 1975, only refers to "similar" or "substantially similar" job requirements, whereas the Convention provides for equal remuneration for work of "equal value", even of a different nature. The Committee notes that the Government has provided no information on the measures taken or envisaged to re-examine national legislation in the light of the requirements of the Convention. The Committee trusts that full information will be provided in this regard in the next report.

3. In its previous comments, the Committee had noted that minimum wage orders generally exclude any ancillary benefits from their scope, while the Convention, as well as the above-mentioned Act include in their scope any additional emolument whatsoever payable in cash or in kind to the worker in respect of work or services performed. The Committee had therefore requested the Government to indicate how, in practice, equal remuneration is implemented with respect to benefits such as housing, marriage or family allowances, in both the private and public sectors. The Committee notes the statement of the Government in its report that there is equal remuneration in both the private and public sectors with respect to the benefits paid or granted in addition to salary.

The Committee, however, notes from the Government's report that while the payment of marriage allowances was discontinued during the 1970s, teachers who were receiving the allowance prior to its discontinuation have continued to receive it. Male teachers who fall into this category receive an allowance of $2,400 per annum.

The Committee points out that the continuing payment of marriage allowances to, it would appear, only male teachers who had entitlement to them prior to their discontinuation is contrary to the provisions of the Convention. It therefore requests the Government to ensure that those female teachers who were also employed prior to the date of discontinuance of the allowance but who were denied it on account of their sex are also granted a marriage allowance.

More generally, the Committee requests the Government to take the necessary steps to ensure that minimum wage orders and any regulations fixing wages for the public sector cover not only cash minimum wages but also any additional emoluments payable in cash or in kind.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1967)

The Committee notes the information provided by the Government in its report and the communication of 30 September 1996 received from the Japanese Trade Union Confederation (JTUC-RENGO).

1. For some years, the Committee has encouraged the Government to take measures consistent with the Convention in order to reduce a persistently high wage differential in the average earnings of men and women, a differential which is more pronounced for older workers. The Committee has observed that the seniority wage system, together with the concentration of women in lower paid jobs and their lack of equal employment opportunities, appear to be the primary causes of the wage differential. In the course of this dialogue, the Committee has suggested that measures be taken to introduce systems which enable an objective appraisal of jobs. The Committee considered this action would assist in ascertaining whether section 4 of the Labour Standards Act, 1947 — which prohibits employers from discriminating between men and women "concerning wages

by reason of the worker being a woman" — is interpreted broadly enough to comply with the principle of the Convention; and that it would help to ensure that the jobs performed mainly by women are not remunerated at levels inferior to those undertaken by men, due to value judgements about the respective qualities and worth of men's and women's work. In its observation of 1992, the Committee had noted that, according to the Government, the employers and workers in the country recognized the merits of the seniority-based system and any reform would have to be undertaken gradually to avoid jeopardizing these merits. The Government's most recent reports, and its representatives in the 1993 and 1994 Conference Committee discussions on this case, have not commented on the possibility of introducing a wage system based on job content. The Committee must therefore conclude that there does not appear to be a consensus among the social partners to change the present situation in this regard. There appears also to be support for this conclusion in the comments made by RENGO, which states that it would be difficult in the short term to introduce a new wage system that would be very different from the present one, partly because wage negotiation is carried out at the level of each enterprise.

2. As regards other initiatives to reduce the wage differential, the Committee notes with interest that the Government has taken some active steps to promote equality of opportunity and treatment in employment for women workers. In March 1994, the Guidelines for Measures that Employers should Endeavour to Adopt to implement the Equal Opportunity Act, 1985, were revised to enumerate further the types of practices considered inconsistent with equal opportunity and treatment. In relation to recruitment and hiring, the practices include establishing prior limitations on the number of women recruited or hired, either generally or for specific types of jobs; and treating women unfavourably as compared with men in regard to providing information on recruitment and hiring, such as explanations on job offers. In assigning certain duties, employers are also called upon not to exclude only women workers for reasons such as marriage, for having reached a certain age or for having children. The Government indicates that it has been making efforts to ensure that both the Act and its Guidelines are publicised and implemented. The Government also states in its report that, in order to enlarge the areas of employment for women, certain of the restrictions stipulated in the Labour Standards Act have been eased and that, along with the review of that Act, the Equal Employment Opportunity Act is being examined by the Women's and Young Workers' Problems Council. The Government states that any necessary legislative action will be taken on the basis of the results of the Council's deliberations.

3. The Government has also supplied information on the outcome of a 1994 survey on the factors accounting for the difference in average actual income between men and women. After adjustments were made to the composition of the workforce to take account of different factors, such as age, level of position, length of service, educational background, etc., women's scheduled cash earnings represented some 80 per cent of men's. As to the factors accounting for this wage difference, the length of service was the most significant, followed by the level of the position held and the educational background. The report also notes that men and women hold different occupations and that the scheduled cash earnings include various allowances paid to household heads (such as family and housing allowances), which are not negligible. In order to reduce the difference in average actual income due to these factors, the Government states that its foremost concern is to reduce the difference in men's and women's length of service. Accordingly, measures have been taken to promote the better harmonization of work and family responsibilities through such initiatives as the Act concerning the welfare of workers who take care of children or other family members including child care and

family care leave (Act No. 107 of 9 June 1995). Although some provisions of this Act, including those relating to the system of family care leave, will be enforced only as from April 1999, the Government states that it is promoting an early introduction of the system of family care leave as well as improvements in the working environment, so that workers will be able to easily take child-care and family care leave and return to work or continue working. In addition to these measures, which also serve to implement the provisions of the Workers with Family Responsibilities Convention, 1981 (No. 156) — ratified by Japan in 1995 — the Committee hopes that the Government will continue to address the other sources of the wage differential.

4. In this regard, the Committee has noted that a 1995 survey undertaken by the Ministry of Labour disclosed that among the companies which hired *sogoshoku* workers (those engaged in planning and decision-making jobs and expected to become top executives), only 27.6 per cent employed both males and females, which was a decrease of 18.9 points from the figure recorded in the previous 1992 survey. According to a report about this survey in the Japan *Labour Bulletin* of 1 June 1996, it was noted that "the larger the company, the higher the percentage of those which have adopted the two-track system" (*sogoshoku*, or *ippanshoku* which comprises those engaged in general office work). The Committee requests the Government to indicate the measures taken to address this practice and any others which limit equality of opportunity and treatment in employment for women, which are inconsistent with the revised Guidelines.

5. In its comments, RENGO states that, in order to narrow the wage gap concretely and realistically, legislation must be enacted to prohibit discrimination between men and women or to strengthen the current Equal Employment Opportunity Act. It also states that enforcement regulations of the Labour Standards Act should be enacted, so as to determine clearly those acts which constitute discrimination against women; and that the Act should prohibit unfavourable treatment for workers who exercise the rights guaranteed by the Act, such as the right to maternity protection. RENGO indicates that it has been promoting a campaign to correct the gender wage gap in the context of collective bargaining. Specifically it has sought, among other things, to eliminate discrimination in the application of the wage table, in promotions, and in respect of family and housing allowances. RENGO recommends, in particular, the abolition of the premium severance pay system for women employees that encourages them to resign at the time of marriage, pregnancy or childbirth and considers that other measures should be taken to enable women to continue working in these circumstances. It also stresses that women should not suffer disadvantageous treatment for exercising their legal rights, such as maternity leave.

6. The Committee has noted from an article in the *Japan Labour Review* of 1 August 1996 that a bill revising the Equal Employment Opportunity Act is likely to be submitted to a regular session of the Diet [Parliament] in 1997. The Committee hopes that the Government, in cooperation with the social partners, will take this opportunity to reinforce the legislation and create machinery for its effective enforcement. It also hopes that any future action will take account of the concerns expressed both by the Committee and the Conference Committee over certain practices which undermine the application of the Convention. The Government is requested to provide information in its next report on any further measures taken to ensure and promote the application of the Convention.

Madagascar (ratification: 1962)

The Committee notes the observations from the Union of Commercial On-Board Staff of AIR MADAGASCAR sent to the Government by letters of 23 January and 4 March 1996. These observations concern the unequal remuneration arising from the difference in the age of retirement between male and female on-board staff, which is set at 50 years for men and 45 years for women by regulation 12 of the 1994 Regulations respecting the conditions of work and remuneration of AIR MADAGASCAR commercial on-board staff.

The Committee hopes that the Government will send its comments on the issues raised in the observations so that it may examine them at its next session.

The Committee is addressing a direct request to the Government concerning other points.

Morocco (ratification: 1979)

The Government notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With regard to the *public sector*, the Committee notes that, according to the report, there is no discrimination in relation to wages between men and women workers in the public service, local communities and public establishments. It also notes, from the statistics supplied by the Government, that the percentage of women in middle- and high-level managerial posts in the public administration is very low in relation to the number of men (85 women branch chiefs compared with 1,754 men, four women directors compared with 144 men, and no women directors-general compared with 26 men). It also notes the monthly wage rates for managerial staff which came into force in the public sector in January 1991. Further it notes the lack of information on wage scales for non-managerial categories of officials or on the distribution of men and women employed at the various levels, as a result of which the Committee is not in a position to assess the extent, if any, to which the application of the Convention has reduced wage disparities based on sex.
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> The Committee would therefore be grateful if the Government would supply detailed information in its next report on the measures which have been taken and the results achieved in increasing the representation of women in managerial jobs and posts of responsibility and in eliminating all wage disparities based on sex in the public sector. It draws the Government's attention to the importance of introducing job classification systems which are based on objective criteria in order to identify and eliminate wage discrimination based on sex. It requests the Government to indicate the methods which are used to undertake an objective appraisal of jobs on the basis of the work to be performed, in accordance with *Article 3 of the Convention*.
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> With regard to the *private sector*, the Committee notes from the report that the survey of wages and working hours is still being carried out and that its results will be forwarded with future reports. The Committee once again hopes that the Government will supply the results of the above survey, together with recent statistics on minimum wages and average earnings for men and women, if possible by occupation, branch of the economy, seniority and skills level, with an indication of the corresponding percentage of women at the various levels.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nepal (ratification: 1976)

1. In its previous comments, the Committee expressed concern about wage discrimination between men and women, especially in the organized tea plantations. The

Government stated that the principle of equal remuneration was applied in such a manner that its infringement was penalized, but that certain immunities had been granted exceptionally to employers in tea estates in order both to provide incentives to that industry — which is in an infant stage of development — and to enhance the employment opportunities of female workers. The Committee reiterated that the Convention enshrines a fundamental human right that applies to all workers in the economy without exception. While acknowledging the need for governments to award incentives to newly emerging industries, the Committee stressed that any such initiatives must be free of discrimination.

2. In its report, the Government states that wage differences between men and women do exist, especially in the organized tea plantations and that the exemptions, which are a temporary arrangement, have taken into consideration the national customary practices and prevailing wage differences in tea plantations, so as not to discourage women's employment in this sector. The Government states that it is committed to ensuring to all workers covered by labour laws the fundamental human rights conferred on citizens by the Constitution, in line with the spirit of the Convention. The Government also points out that it has constituted very recently a tripartite central Labour Advisory Board, which will review all the present inconsistencies, flaws and anomalies in the labour and related fields to keep them abreast of the letter and spirit of the national Constitution and of ratified ILO Conventions. The Government gives its assurance that no immunities or incentives will be given to employers that either jeopardize the constitutional provisions or violate basic human rights and the requirements of Conventions. The Government considers, however, that it should be given some flexibility to implement the Convention in a realistic way, taking into consideration the peculiarities of the socio-economic and customary practices that do not violate the basic principle of the Convention.

3. The Committee must repeat once again that any scheme which denies women the fundamental human right of equal pay is not in conformity with the basic principle of the Convention. In this case, it also does not appear to be in conformity with the national constitutional and other legal provisions. The Government's statement that such a scheme is in line with national customary practices and prevailing wage differences in tea plantations increases the Committee's concern over the application of the Convention, as it would appear that the exemption in question was granted in order to legitimise an existing practice that already contravened national legislation and the Convention. This also raises questions about the intended duration of the exemption. Accordingly, the Committee urges the Government to remove forthwith the exemption from equal pay for women workers granted to employers in tea plantations and in any other industry in which similar exemptions have been made. If it is considered that measures need to be adopted both to encourage the development of tea plantations and to encourage women's employment in that sector, the Committee suggests that the Government explore — perhaps in a meeting of the central Labour Advisory Board — the introduction of a range of non-discriminatory measures, such as granting special tax relief to employers in the industry.

4. In previous observations, the Committee has sought information on the means by which the principle of equal remuneration for work of equal value is applied in situations where women and men carry out different work noting, in this connection, that article 11(5) of the 1990 Constitution proscribes discrimination between men and women in regard to remuneration only "for the same work". Section 11 of the 1993 Labour Rules — which provides that "In the event that male or female workers or employees are engaged in work of the same nature in an establishment, they shall be paid equal

remuneration without any discrimination" — is also a narrower formulation of the equal pay principle than that required by the Convention. The Committee pointed out that the principle of the Convention is intended to cover not only those cases where men and women undertake the same or similar work, but also the more usual situation where they carry out different work. In order to determine pay structures, the Committee pointed out that the requirements of the different work carried out by men and women should be evaluated in a gender-neutral manner on the basis of objective criteria that take adequate account of the various aspects of men's and women's work.

5. In its report, the Government expresses its need for technical assistance to determine the wage structure in a rational and pragmatic way. It also indicates its hope to introduce a system for the objective appraisal of jobs and reiterates its request for ILO assistance in this regard. The Committee once again expresses the hope that the Government will examine the recommendations already contained in the report of an ILO mission to advise on wage fixing and equal pay (presented to the Government in 1993) and that the Government's next report on this Convention will contain information on any measures taken towards their implementation. It will also ask the responsible services in the Office to discuss with the Government any further assistance that might be useful.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Netherlands (ratification: 1971)

The Committee notes with interest the information provided by the Government in its report and in the attached documentation.

1. In a previous comment, the Committee noted comments by the Netherlands Trade Union Confederation (FNV) stating that the various forms of flexible employment relationships, which were undertaken mainly by women, were a primary source of pay inequality. The Committee notes with interest that the issue of the lower pay received by women employed on a flexible basis (temporary contract and an hourly wage) in relation to the pay received by full-time employees on permanent contract led to a case before the Supreme Court (Agfa judgement, 8 April 1994, Case No. 15 292). The district court had upheld the plaintiff's claim for equal pay on the grounds that the employment relationship between the plaintiff and her employer was virtually the same as that between full-time employees and the employer (in terms of the long duration and permanent character of her activities) deciding that, accordingly, the original character of the employment relationship had disappeared. The district court took into account the generally accepted principle that employees are entitled to fair pay, which means, inter alia, that equal work performed in the same conditions should receive equal pay, unless there are objective grounds that justify otherwise and held that under section 1638z of the Civil Code — which requires acting as a good employer — that the employer was obliged to remunerate the plaintiff in the same manner as her colleagues on permanent contracts. The Supreme Court upheld this judgement.

2. In this connection, the Committee also notes with interest that the Parliament enacted legislation (with effect as from 1 November 1996), which prohibits discrimination between employees on the basis of their working hours, and as regards the conditions under which an employment contract is entered into, extended or terminated. According to the Government, this means that action against unequal treatment on the grounds of working part time can be taken by means of a less complicated procedure than invoking the ban on indirect sex discrimination. The

Government also considers this improvement in the legal status of part-time workers might encourage more men to undertake part-time jobs, thereby promoting a more equal distribution of paid and unpaid work between men and women. The Committee requests the Government to provide copies of this legislation and to furnish information on its application in practice.

3. The Committee is addressing a request directly to the Government on certain other points.

New Zealand (ratification: 1983)

The Committee notes the detailed report and annexed documents provided by the Government. The Committee also notes the comments of the New Zealand Employers' Federation (NZEF) and of the New Zealand Council of Trade Unions (NZCTU), on which the Government has furnished additional comments. In addition, the Committee notes the 1994 Conference Committee's discussion of this case.

1. In its previous observation, the Committee had requested the Government to indicate the measures being taken to ensure the implementation of the Equal Pay Act, 1972, and of the Human Rights Commission Act, 1977, more particularly in respect of individual employment contracts concluded pursuant to the Employment Contracts Act, 1991. It had also asked the Government to provide information on the measures taken to foster employment equity, including information on the use and results of job evaluation. In its report, the Government states that it is continuing to pursue legislative and non-legislative action to promote the principles of equal remuneration and equal employment opportunities, as well as to increase the proportion of women in the workforce and to reduce occupational segregation. It indicates that these measures are based on the recognition that differentials in earnings cannot be addressed simply by legislative prescription, but require a wide range of positive activities which impact on the attitudes and behaviour of society as a whole. Among the initiatives put into place recently, the Government refers to its current development of policy options to address a number of areas flowing from the Platform for Action, adopted at the United Nations Fourth World Conference on Women, Beijing, September 1995, including the gender pay gap, mainstreaming a gender perspective in the development of all of its policies and programmes and the need for more and better data collection about all aspects of women's lives.

2. The NZCTU indicates that the legislative basis for implementing the principle of the Convention is inadequate, that the protections are weak, and that the remedies are legalistic, expensive and slow. The NZCTU states that the Equal Pay Act was rendered inoperative by the Employment Contracts Act and that this was acknowledged in an official report (entitled "Effectiveness of the Equal Pay Act"), prepared in 1992 by the staff of the Ministry of Women's Affairs. It draws attention to the fact that no equal pay complaints were lodged with the Labour Inspectorate which is charged with advising on and enforcing the Equal Pay Act. The NZCTU also indicates that the Employment Contracts Act and the Human Rights Act outlaw pay discrimination on the basis of sex for the "same work" rather than for work of equal value. According to the NZCTU, it is not surprising that there are no cases where personal grievances have been heard on the grounds of gender discrimination under the Employment Contracts Act and that the Human Rights Commission has not found any similar complaint to have substance. The Government expresses disagreement with the NZCTU's criticisms of the formal mechanisms provided in respect of equal pay and states that the Labour Inspectorate, which deals with some 150,000 inquiries annually, is adequately resourced and fulfils

well its information and enforcement functions; that both other Acts provide procedures and remedies to protect employees against discrimination; and that the Employment Tribunal is a low level, low cost, informal and speedy institution which can hear personal grievance cases founded on discrimination. It maintains that the combination of information, education and enforcement will achieve the same goals as formal legislative instruments in a less prescriptive, more cooperative and more efficient manner. As the Government has acknowledged in its report, the Committee has often observed that, for progress to be made in the promotion of this Convention, it is important that a comprehensive approach be taken to ensuring and promoting equality of opportunity and treatment in a wider context. Where legislation forms a component of any such approach, it is, of course, important to ascertain that it is effective. In this respect, the Committee would be grateful for the Government's comments on the 1992 report concerning the Equal Pay Act, cited by the NZCTU.

3. According to statistics provided by the Government, the gap between the average hourly earnings of males and females has remained relatively constant at around 81 per cent during the reporting period. Commenting on these figures, the NZCTU states that, in the absence of any legally established or recognized bodies responsible for determining wage rates, the gender pay gap will not close. The Government states, in this regard, that it believes the parties to an employment contract are best placed to negotiate their terms and conditions. The NZEF states that the question as to whether any of this earnings gap can be attributed to discrimination is far from established; there are numerous other factors which contribute to the gap, including the tendency of women to have different workforce experiences to men, often because of the caring work they do in the home (usually as a matter of choice); their tendency to work in service-type jobs which, by their nature, cannot attract the kind of wages paid by profitable concerns; the fact that until recently few women occupied senior positions; and the education and training undertaken by women. The NZEF also emphasizes that where the Government speaks of *pay* or *wage* differentials, it should instead be referring to *earnings* differentials. The Government's report also makes reference to a recently commenced process of researching the nature of earnings distribution — involving, so far, an analysis of data from Statistics New Zealand's Household Economic Survey (HES) — which is intended to contribute to a better understanding of the relationships between earnings, gender and other characteristics. Initial results show a decrease in the apparent gender pay gap and have also pointed out a variety of interrelationships between demographic characteristics and earnings. The Committee asks the Government to furnish information on the outcome of this research.

4. Further to its previous observation, the Committee notes the 1993 report (entitled "A Survey of Labour Market Adjustment under the Employment Contracts Act 1991") prepared for the Department of Labour, which concludes that: "Despite some concern and well publicized abuses of the Act, around 75 per cent of employees with new contracts are satisfied with their terms and conditions; 14 per cent are dissatisfied and the remainder are neutral. New contracts now cover 75 per cent of employees." The report indicates that some discomfort with the current balance of power in favour of employers is evidenced by the level of approval of the Act among employees being lower than might be expected given the high levels of satisfaction with terms and conditions; and that employees' views on cooperation with management, trust of management and job security are very different and less favourable than those of employers. The report also indicates that even though there was some support for changes to the operation of the Act, there was virtually no support for its abolition. However, the greatest support for change concerned the bargaining process itself and

came from small employers and public sector enterprises. They emphasize the need to encourage more agreement, to provide guidelines for negotiation and even wage levels which, according to the report, indicates the difficulty that many employers face in having to negotiate wage rates with employees where previously they had a clear benchmark from industry and occupational awards. A further report supplied by the Government, which undertakes a gender analysis of the employee data collected for the above-mentioned survey of the Employment Contracts Act, concludes that overall there were few significant differences between men and women as concerns the impact of the Act and that the differences in groups of employees were more likely to be associated with their labour market position rather than with gender. The Committee requests the Government to indicate whether measures have been taken, or are contemplated, to address the difficulties identified in these surveys.

Niger (ratification: 1966)

1. The Committee notes with satisfaction the adoption of Ordinance No. 96-039 of 29 June 1996 issuing the Labour Code, which has taken broadly into account its previous comments and the technical comments made by the ILO, particularly as regards the provisions of sections 147 to 149, which are in conformity with the provisions of the Convention.

2. The Committee is addressing a request directly to the Government on other points.

Nigeria (ratification: 1974)

1. In its previous comments, the Committee has observed that, since ratifying the Convention more than 20 years ago, the Government has not furnished information which provides an adequate basis for assessing the application of the Convention. For the most part, the Government's reports have contained the type of broad statement repeated in its latest brief report, indicating that the principle of the Convention is applied and that no contraventions of its practical application have been reported. As concerns the legislative framework, the Government has relied on the narrow formulation of equal pay for equal work, contained in article 17(3)(e) of the Constitution and on the provisions of the National Minimum Wage Act, 1981, which exclude a large section of the workforce from its scope (namely, workers in establishments employing fewer than 50 persons, part-time workers, workers paid on commission or on a piece-rate basis, seasonal workers in agriculture, workers in merchant shipping or civil aviation). While the Government indicated previously that the National Labour Advisory Council was to review the coverage of the Act, no reference has been made to this matter in the Government's present report. Likewise, the Government has not provided sufficient information on the practical application of the Convention.

2. In its latest report, the Government states that sections 10 and 11 of the Wages Boards and Industrial Councils Act, 1990, deal extensively with the Convention. The Committee observes that this legislation has not been referred to previously by the Government. Moreover, as the Committee has not been able to locate a copy of the Act, it asks the Government to furnish the legislation and to provide information on its implementation. However, the Committee has located other recently-enacted legislation — the National Salaries and Wages Commission Decree (No. 99 of 1993) — which appears to be of significance to the application of the Convention, as it provides for the establishment of a commission with wide functions, inter alia: to advise the federal Government on national incomes policy; to encourage research on wages structure

(including industrial, occupational and regional and any other similar factor, income distribution and household consumption patterns); to establish and run a data bank or other information centre relating to data on wages and prices or any other variable and for that purpose to collaborate with data collection agencies to design and develop an adequate information system; to examine, streamline and recommend salary scales applicable to each post in the public service; and to examine the salary structures in the public and private sectors and recommend a general wages framework with reasonable features which are in consonance with the national economy. The Committee requests the Government to provide information in its next report on the functioning of the Commission, particularly as concerns any progress being made to collect data that would illustrate the extent to which the Convention is being applied in practice. It also hopes that any review of salary structures in the public and private sectors will take account of the requirements of the Convention and asks the Government to indicate any progress made in this regard.

3. Recalling paragraph 253 of its 1986 General Survey on equal remuneration, the Committee observes that it is hard to accept statements suggesting that the application of the Convention has not given rise to difficulties or that full effect is given to it, without further details being provided. It therefore trusts that the Government will reply to the above requests for information with as much detail as possible. The Committee also reminds the Government that the Office may be called upon to provide advice and technical assistance concerning the application of the Convention.

[The Government is asked to supply full particulars to the Conference at its 85th Session.]

Norway (ratification: 1959)

1. Further to its previous comments, the Committee notes with interest that the Gender Equality Act (Act No. 45 of 1978) was amended in 1995 to provide that, if differential treatment regarding wages can be established between men and women performing work of equal value, the employer must substantiate that this is not due to the gender of the employees (section 5). A similar amendment to reverse the burden of proof was made in regard to recruitment, promotion, notice to leave or temporary lay-offs (section 4). The Committee also notes with interest that the Government proposes to amend further section 5 to include criteria for comparing jobs. The Committee would be grateful if the Government would continue to provide information concerning any amendments made to the Gender Equality Act, together with information on the application in practice of the Act.

2. The Committee notes with interest that among the initiatives described in the report, a priority has been placed on achieving pay equality in public sector wage settlements during the current decade. In this regard, settlements to benefit low-wage groups, to award equal monetary increments to all public sector employees and to ensure that women receive a larger than pro-rata share of the amount available for distribution, have all brought about a favourable trend in pay equality in recent years. It also notes that the Government appointed a job evaluation committee in 1995 and implemented, on a trial basis, the Women's Pay Committee's proposal for a job evaluation system in a selection of municipalities. Please furnish information on the outcome of these initiatives.

Paraguay (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes Act No. 213 of June 1993, which issues the new Labour Code. The Committee notes with satisfaction that this text amends section 230 of the former Code, which had been the subject of its comments, and that it provides in section 229 that equality of remuneration rates must be without distinction on the basis of sex for "work of equal value", whether or not the work is of the same nature. The Committee notes that for the purposes of this provision, remuneration does not include the components of the wage which is related to seniority and merit. The Committee requests the Government to indicate the manner in which the principle of equality of remuneration for men and women workers is also applied to the components of remuneration which relate to seniority and merit.

Saudi Arabia (ratification: 1978)

The Committee takes note of the Government's reports and of the discussion which took place in the Conference Committee on the Application of Standards in 1994.

1. The Committee notes with interest the adoption of Decree No. 37 of 9/2/1415 H (9 February 1996) supplied by the Government, section 1 of which lays down for the first time "The obligation on employers to treat men and women employees on equal terms as regards remuneration when the conditions and circumstances of the work are the same". It also notes that, according to the Government's reports, this Decree ensures the principle of equal remuneration between men and women workers "for work under equal conditions and circumstances".

2. The Committee notes, however, that the Government's reports give no further indications of how this new legislation — which is aimed specifically at giving effect to the Convention — ensures application in practice of the concept of "work of equal value" as contained in *Article 2, paragraph 1, of the Convention*, a concept that is wider than the actual text of section 1 of the Decree. It accordingly refers the Government to paragraphs 19 and 44 to 50 of the 1986 General Survey on equal remuneration, where the Committee explains how this Convention goes beyond a reference to the same or similar work or work carried out in the same conditions, in choosing the *value* of the work as the point of comparison. The Committee would therefore appreciate receiving in the Government's next report on this Convention, an indication of the application in practice of Decree No. 37, for example, through statistics concerning the minimum wage rates and actual average earnings of men compared to those of women in the private sector, if possible, broken down by occupation, branch of activity and seniority. It recalls that it had stressed in its previous direct request the importance of having recent statistical information in order to be able to evaluate the application of the Convention.

3. Noting in this connection the important role that workers' and employers' organizations can play in giving effect to the provisions of the Convention (*Article 4* of the Convention), the Committee would ask the Government to indicate in its next report the methods of cooperation with the employers' and workers' organizations in the country, particularly in applying Decree No. 37.

Spain (ratification: 1967)

1. The Committee takes note of the detailed information and statistics contained in the Government's report in reply to its previous comments. It also notes the comments on the application of the Convention in practice sent by the Trade Union Federation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT).

2. The Committee notes that the CC.OO. generally criticizes the continuing wage gap between the earnings of men and the earnings of women, which it estimates to be, for monthly wages, 72.2 per cent. While both workers' organizations applaud the change in the Workers' Statute, noted with satisfaction in the Committee's previous observation, they claim that there continues to be indirect discrimination based on the undervaluation of the work carried out by women. The UGT adds that the concept of "salary" under section 28 of the Workers' Statute does not correspond to the definition of remuneration contained in the Convention; and that the enforcement measures remain inadequate despite certain improvements introduced by sections 96 and 180 of the Act on Labour Procedures (such as cancellation of unjustified dismissals; reversal of the burden of proof in discrimination cases; and partial annulment of collective agreements which are found to contain discriminatory clauses).

3. While awaiting a detailed reply from the Government on these comments, the Committee notes that it has taken note in previous direct requests of the measures being taken by the Government to determine the causes of the wage discrepancies (such as, the activities of the National Women's Institute and the training of the labour inspection services regarding wage discrimination). The Government's most recent report also reflects the serious attempts being made by the authorities and the courts to redress any imbalances that may be due to the sex of the worker. The Committee therefore trusts that the Government's reply to the above comments on the practical application of the legislation which enshrines the principle of the Convention will contain similar details, in an effort to meet the concerns of the CC.OO. and the UGT.

United Kingdom (ratification: 1962)

The Committee notes the information provided by the Government in its report and the comments of the Trades Union Congress (TUC), dated 8 November 1996. The Committee also notes the Government's observations on the TUC's comments, received on the eve of the Committee's session.

1. *Abolition of wages councils*. In its previous comments, the Committee noted that the TUC was concerned that the abolition of the wages councils (by the enactment of the Trade Union Reform and Employment Rights Act, 1993) would cause women's remuneration as a proportion of men's to decline. The Government states that, since the passage of the 1970 Equal Pay Act, women's average hourly earnings excluding overtime have risen steadily as a proportion of men's from 63 per cent to the highest ever figure of 79.9 per cent in April 1996. In Northern Ireland the same trend has been observed with women's earnings reaching 85.3 per cent as a proportion of men's in 1995. The Government stresses that it was the application of the Equal Pay Act which required wages councils, other statutory bodies and employers generally to ensure equality of pay between the sexes and that, previously, wages councils could, and did, set lower rates of pay for women. The Government also indicates that changes in the earnings of both men and women reflect varying conditions in the particular industries or companies concerned which can themselves be influenced by a range of factors such as structural and technological change or profitability. The Government considers it neither possible nor appropriate to attribute changes to one particular event such as the abolition of any wages council. The Government refers to an analysis of the New Earnings Survey (NES) for the period 1990-96 as an illustration that the rate of earnings movement in those industrial sectors where the main wages councils had operated was subject to fluctuation both before and after the abolition of those councils. It also refers to an analysis of the 1993 and 1994 NES undertaken by the former Employment

Department in 1994 to compare the movement in earnings of those individual workers who had been covered by a wages council in April 1993 and who had not changed jobs in the seven months following abolition of the council. The Government states that this analysis, as well as a further one comparing 1994 and 1995 NES data, has confirmed its view that there had not been any general fall in earnings following abolition of the councils.

2. The TUC indicates that its own analysis shows a considerable fall in pay in many of the industries formerly covered by the wages councils and that women have suffered disproportionately from this downward pressure on pay, exacerbating the inequality of pay which affects low-paid women workers particularly. It observes that, in the hotel sector, the average earnings of all workers have fallen in real terms since 1993 and that even in those sectors where pay has risen in real terms, such as in food retailing and the clothing industry, the increases have been significantly lower than those for the service and manufacturing sectors more generally. While acknowledging the fluctuations in earnings in industries previously covered by wages councils, the TUC states that 1993-96 has been a period of continuous wage growth and the fact that those industries are falling behind the growth gives cause for concern about the implementation of the principle of equal pay. In this connection, the Government states that the TUC analysis fails to take into account the differing impact of the recession and recovery on different sectors of the economy. Moreover, the Government states that the period covered by the TUC analysis is too short a period to differentiate the cyclical, structural and institutional changes and their effect on employment and earnings.

3. The Committee notes that both the Government and the TUC based their analysis on the NES. As concerns the TUC's statement that the NES does not fully reflect the situation of low-paid workers, the Government states that, while the NES does measure the earnings of many workers paid below the tax and national insurance thresholds, the Office for National Statistics acknowledges that the NES does under-represent lower-paid workers who do not pay income tax. The Committee notes that while there has been a welcome narrowing of the earnings gap overall, there appear to be some occupational categories where there remains a wide differential in the earnings of men and women (for instance, in sales occupations, the average gross hourly earnings excluding overtime of full-time women was only 66.6 per cent of the corresponding figure for men in April 1995 and in craft and related occupations it was 67.7 per cent). The Committee requests the Government to indicate whether any studies have been undertaken to discern more precisely the reasons for the existence of such a significant earnings differential in certain occupational categories.

4. *Compulsory competitive tendering (CCT).* The TUC refers to the publication in 1995 by the Equal Opportunities Commission of research on the effects of CCT in local government, which found that this process had a negative impact on the wages of women. According to the TUC, the research found that in female-dominated areas such as catering and cleaning the contractual hours fell by 16-25 per cent and the wages fell in some areas, whereas the pay levels increased and the contractual hours remained the same in male-dominated areas. Women part-time workers were shown to be the worst affected, with lower pay, fewer hours and worse terms and conditions of employment. The Committee requests the Government to comment on the 1995 study referred to by the TUC and to indicate whether any measures have been taken, or are contemplated, to redress any problems identified in the research which have an impact on the application of the Convention.

5. *Part-time workers.* The TUC considers that the application of the Lower Earnings Limit (LEL) for national insurance contributions has a discriminatory effect and

an adverse impact on women's pay. It indicates that many now have earnings below the LEL and therefore fail to qualify for state benefits such as maternity and sick pay, unemployment benefit and state pensions. It states that most of those excluded from basic national insurance benefits are part-time workers of whom the large majority are women. The Government states that workers who earn less than the LEL are not excluded from the national insurance schemes altogether as they can choose to pay national insurance contributions on a voluntary basis so as to earn an entitlement to a retirement pension. Married women can also rely on their husbands' contribution records for pension purposes and are by far the larger group to benefit from Home Responsibilities Protection which acts to protect the basic retirement pension position of the individual. According to the Government, research shows that employers regard savings on national insurance contributions as a very minor reason for the employment of part-time workers: the main reason for the employment of part-timers (who comprise most of the low-paid workforce) was that this suited the work available. Even though many employers do not regard the LEL as an important determinant of wage levels, the Government considers that a requirement to pay contributions in respect of all employees could lead to a rise in non-wage costs and a possible reduction of work opportunities at lower wage levels, which would particularly affect women who often welcome the chance to combine paid employment with domestic responsibilities.

6. The Committee has taken note of the Government's information and explanations. It would point out, however, that the abolition of the wages councils, the application of the LEL and other measures have had deleterious effects on certain categories of women workers which are felt more particularly by those working part time. The Committee would welcome any indications from the Government as to the measures that might be taken to improve the situation of these women workers, especially as concerns their remuneration and entitlements.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Czech Republic, Denmark, Djibouti, Dominica, Ecuador, Egypt, Equatorial Guinea, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Islamic Republic of Iran, Iraq, Ireland, Israel, Jamaica, Jordan, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Malta, Mexico, Mongolia, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Slovakia, Slovenia, Sri Lanka, Swaziland, Switzerland, Syrian Arab Republic, Togo, Tunisia, Turkey, Ukraine, Uruguay, Venezuela, Yemen, Zaire, Zambia, Zimbabwe.*

Information supplied by *Cuba, Guyana, Norway, Panama, San Marino* and *Spain* in answer to a direct request has been noted by the Committee.

Convention No. 101: Holidays with Pay (Agriculture), 1952

A request regarding certain points is being addressed directly to *Sierra Leone*.

Convention No. 102: Social Security (Minimum Standards), 1952

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee had pointed out that, pursuant to section 51 of Supreme Decree No. 22-578 of 13 August 1990, the Bolivian social security system does not provide for the payment of family benefits in the manner prescribed under *Article 42, Part VII (Family benefits), of the Convention*. In reply, the Government limits itself to stating that the regime of family allowances is under the administration of the employers, and that the social security system monitors compliance. In these circumstances, the Committee cannot but again express the hope that the Government will adopt the necessary measures to re-establish a regime of family benefits which complies with the provisions of Part VII of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Croatia (ratification: 1991)

The Committee notes the first report of the Government which also contains a reply to the questions raised in its previous observation in connection with the comments made by the Union of Autonomous Trade Unions of Croatia (UATUC).

1. The Committee recalls that in its previous comments the UATUC alleged that a large number of workers in Croatia were denied health protection on the basis of section 59 of the Health Insurance Act in force as of 13 August 1993 which provides, in particular, that for contribution payers who fail to pay the insurance contribution, the use of health protection funded by the Institute for Health Insurance shall be reduced to the right to emergency medical aid only. The UATUC pointed out that under the said legislation the obligation to pay a contribution rests with the employer who deducts it from the wage of the insured workers employed by him, and that in case the employer fails to pay the contribution, the insured worker has no legal possibility personally to pay the contribution, nor does he have any other legal means of recourse to force the employer to pay it, while the Institute for Health Insurance to which the contributions are paid has the legal possibility to exact payment from employers.

In reply, the Government indicates that amendments to the Health Insurance Act, which have been in force since July 1996, provide for measures which give the Institute for Health Insurance the authority to collect arrears of contributions from the persons under obligation to pay them. The Government considers that in this way the measures for the collection of health insurance contributions will be directed exclusively towards employers who are obliged to pay them.

The Committee notes this information. It asks the Government to supply a copy of the amendments in question as well as to confirm that the legal provisions contained in section 59 of the Health Insurance Act, as well as the practice, referred to by UATUC, concerning the restriction of health protection funded by the Institute of Health Insurance to emergency medical aid, in case of non-payment of contributions by the employers on behalf of their insured workers, were abolished in conformity with *Article 69 of the Convention*.

2. In its previous observation the Committee has raised a number of questions in connection with the UATUC's comments alleging that, as a result of the amendments of the Employment Act of 21 October 1994, a number of unemployed persons have been

taken off the unemployment record on the grounds which were considerably wider than those provided for in section 51 of this Act which regulates the loss of the right to an unemployment allowance. The Committee notes that the Government refers in its report to a new law on employment adopted by the Croatian Parliament on 28 June 1996, and, in particular, to the provisions under which the right to an unemployment benefit could be suspended, inter alia, in cases where the person concerned establishes an enterprise or becomes self-employed (personal labour or professional activity). The Committee would like the Government to supply the text of the law on employment of 1996 in force, together with any other relevant regulations.

3. The Committee will proceed with a detailed examination of the information contained in the Government's report once it has at its disposal the translation into English or French of the text of the various relevant legislative texts.

Germany (ratification: 1958)

The Committee notes the information contained in the Government's report.

Part XIII (Common provisions), Article 69(i), of the Convention, concerning suspension of unemployment benefit. For a certain number of years, following observations made by the German Confederation of Trade Unions (DGB), the Committee has considered whether section 116 of the Federal Employment Promotion Act, as amended in 1986, is consistent with Article 69(i).

Section 116(3) as amended, permits the suspension of unemployment benefit due to workers who have lost their employment as a result of a trade dispute, but who have not participated in the dispute: (a) when the enterprise in which the persons concerned have been employed falls within the territorial and occupational scope of the collective agreement which gave rise to the dispute; and (b) when the enterprise in question does not fall within the territorial scope of the collective agreement but belongs to an occupational sector covered by it. In the latter case, benefits are only suspended if a claim which is the same — but not necessarily identical — in nature and scope to the principal claim giving rise to the dispute has been made and if the results of the dispute will in all probability be endorsed, "in essential respects", by the collective agreement which is not the subject of dispute, but which applies in the territory where the enterprise is located. The Neutrality Committee, composed of employers' and workers' representatives and the President of the Federal Labour Institute, determines whether these conditions for suspension of benefits under section 116 have been met.

In its previous comments, the Committee stressed the importance of the practical application of the amendment to section 116 in assessing compliance with Article 69(i) and requested copies of any relevant decisions of judicial bodies.

In December 1994, the DGB submitted a communication concerning the judgement of the Federal Social Tribunal published 4 October 1994 (No. BSGE, AZ: 7KeAr 1/93) which confirmed a decision of the Neutrality Committee in most respects and found that, in the circumstances of the case, the requirement provided for under section 116(3) of the Employment Promotion Act was met so as to allow the refusal of unemployment benefit in cases of work stoppage due to strike actions in other geographic regions. The DGB alleged that this decision contravenes Article 69(i) and infringed upon the right to strike.

In reply to the comments of the DGB, the Government fully endorsed the finding of the Federal Social Tribunal that section 116 was in compliance with Article 69(i) and was consistent with the principle that the State should not intervene in an industrial dispute by granting benefits to laid-off workers who will probably also benefit from the result achieved by other workers on strike. According to the Government, such intervention would come about if the State were to assume the loss of earnings risk for workers who will probably also benefit from the result achieved by other workers on strike although they are not themselves directly involved in the industrial action.

The Committee has been supplied with copies of the decisions of the Neutrality Committee (1 July 1993), the Federal Social Tribunal (4 October 1994) and the Constitutional Court (BVG, 14 April 1995), concerning section 116 of the BVG Employment Promotion Act, as amended in 1986. The Committee has examined these decisions. It notes that, according to the Federal Social Tribunal and the Constitutional Court, section 116(3)(2) requires that the Neutrality Committee find the following facts: (1) that the workers affected by the work stoppage but not involved in the strike in another geographic region must have formulated claims concerning their collective agreements and be in the process of asserting them; (2) that the principal claim they have asserted or intend to assert is "the same in nature and scope" as the principal claim asserted by the workers on strike; and (3) that "in all probability" the one set of claims will be substantially endorsed in the other. All three elements must exist throughout the duration of the denial of benefit under section 116(3)(2); a change in circumstances eliminating any one element will result in a termination of the application of the Neutrality Committee's decision upon which the Employment Office determines individual claims for benefit in case of work stoppage due to an industrial dispute. The Federal Social Tribunal found that in the case before it, all three elements clearly existed simultaneously for a limited period of time during the work stoppage, and it presented data on the high correlation in recent years in the wages and training allowances in the same wage sector between the geographic areas involved in collective bargaining more or less simultaneously in May 1993. The Federal Social Tribunal found irrelevant the fact that the industrial action in this case was taken in reaction to the employers' withdrawal from the collective agreement of 1991.

The Committee notes in particular that the Federal Social Tribunal considered the principal claim in a strike to be that for which the trade union mobilizes its membership with a view to industrial action, and which has predominantly characterized that action. The principal demands in each geographic sector must be the same in terms of nature (i.e. its objective) and scope (i.e. its extent), without necessarily being identical: according to the Federal Social Tribunal, the legislative intent was to indicate that the word "same" did not imply that the claims were fully equivalent in every detail; however, "same" should be considered in each individual situation to determine the economic importance of the claim. The Federal Social Tribunal emphasized that the term "same" should be interpreted narrowly: "[t]he claim made and the action's principal demands have to be so close to each other that they almost entirely correspond." Although the Federal Social Tribunal considered that the differences in the kind of agreement proposed (company level, sectoral level, etc.) did not have any bearing on the determination of similarity of claims, it stressed that such differences should be scrutinized in connection with the assessment of probability.

Lastly, according to the Federal Social Tribunal, the Neutrality Committee has no flexibility margin or prerogative of evaluation, when it decides whether the result of the dispute in one sector will probably be transferred to the other; and its forecasts are subject to judicial review. The forecast must stand up to a stringent analysis and the conclusions must appear highly probable on the basis of specific information and experience. The Constitutional Court generally affirmed the Federal Social Tribunal's ruling and held that section 116 was consistent with the German Constitution, based on the facts of the case before it.

The Committee recalls that in its previous observations, especially the 1965 observation addressed to Germany, it has discussed at length the meaning of "as a direct result of a work stoppage" contained in Article 69(i). This wording is intended to distinguish between workers who have little or no interest in the outcome of a trade dispute and therefore should not have to bear the risk of such an action, and those who have a substantial interest in the outcome of the trade dispute and therefore may more reasonably be expected to shoulder the burden along with the workers on strike. As the Committee has stated in previous comments, the key issue is whether the trade dispute is likely to influence the claimants' conditions of work. In this respect it considers that the standard of "in all probability" applied in section 116(3)(2)(b) distinguishes adequately between interested and uninterested workers. The Committee also considers that the assessment of whether the claims are the "same in nature and scope" to be a key issue in evaluating compliance of section 116 with Article 69(i). The Committee is aware that the amendment to section 116(3), is likely to affect adversely entitlement to unemployment benefit during industrial action but, based on the Federal Social Trinbunal's findings of fact, it appears that the suspension of benefit in this specific case was not inconsistent with the provisions of the Convention. In this respect, however, the Committee again draws attention to the Federal Social Tribunal's statement that the term "same" must be determined in each individual case, and it would appreciate being kept informed of any future rulings on section 116.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination at its next session and that it will contain full information on the following points:

With regard to *Part IV (Unemployment benefit) of the Convention*, the Committee notes the information supplied by the Government in June 1995 in reply to its previous observation. Referring to section 38 of the Social Security Act of 1980 and Decision No. 303 of 1988, which set out rules governing the provision of cash unemployment benefits, the Government confirms that where a contributor's work or service is terminated without him being entitled to a pension, he shall continue to receive his previous salary until he finds another job, subject to such limits and in accordance with such conditions and rules as may be prescribed for this purpose. It further states that the Social Security Fund has not paid unemployment benefits up to now because it has not yet imposed the contributions to cover unemployment, such a measure requiring amendment of the insurance legislation currently in force. The Government adds that there is virtually no unemployment in the country, but that it is endeavouring to establish the necessary rules to apply Part IV of the Convention. The Committee wishes to recall in this respect that the unemployment benefits which are payable by the employer cannot be considered as sufficient to give effect to Part IV of the Convention, which has to be implemented by a system of social security organized and financed in accordance with *Articles 71 and 72* of the Convention. It therefore hopes that the Government will be able to take the necessary measures, in law and in practice, in order to establish an unemployment social security scheme in accordance with the Convention. It asks the Government to indicate the progress made in this respect in its next report.

With regard to *Part VII (Family benefit)*, the Committee recalls that section 24 of the Social Security Act only covers the provision of family allowances to pensioners whereas, according to *Article 41* of the Convention, the persons protected shall comprise: (a) prescribed classes of employees, constituting not less than 50 per cent of all employees; or (b) prescribed classes of all the economically active population, constituting not less than 20 per cent of all residents; or (c) all residents whose means during the contingency do not exceed prescribed limits. It once again hopes that the Government will be able to re-examine the situation so as to include in the Libyan social security scheme measures relating to family allowances in order to ensure that full effect is given to Part VII of the Convention.

Peru (ratification: 1961)

1. With reference to the matters raised by the Committee in its comments in February-March 1995, the Government recalls that there are two social security systems in Peru: the public system, known as the National Pensions System; and the private pensions system. The Government states that it complies with the provisions of Convention No. 102 in establishing a public system and promoting the existence of private and/or mixed institutions. The coexistence of the two systems means that insured workers have access to a just and worthwhile pension and promotes a healthy efficiency and improvement in the benefits provided. It is in this context that the Government adopted Legislative Decree No. 25897 of 1992, establishing the private pensions system. The fundamental characteristics on which the private pensions system is based are free choice, private administration, compulsory savings, individual capital accumulation and the cost-benefit ratio. The Government states that the private pensions system, in view of its principles and basic characteristics, cannot be included or analysed within the scope of Convention No. 102. The Government requests the Committee to revise the provisions of this Convention with a view to including the new concepts that have been adopted recently in various countries throughout the world.

The Committee recalls that, as illustrated in its General Surveys of 1961 and 1989, Convention No. 102 was conceived in a highly flexible manner. It is possible to achieve the same level of social security through various approaches. The Conference deliberately refused to adopt a rigid terminology which would have been ill-suited to the particularly wide range of national solutions, still less to the rapid and constant developments in systems of protection (paragraph 41 of the General Survey of 1989). Nevertheless, the Convention sets forth a number of practical criteria of general applicability for the organization and functioning of social security systems *(Articles 71 and 72)*.

In its observation of February-March 1995, the Committee noted that workers who enter the labour market for the first time in principle have the option of joining one or other of the systems. Nevertheless, once they have registered with a private pension fund administrator, workers can no longer rejoin the system administered by the Insurance Standardization Office (ONP) (previously part of the Peruvian Social Security Institute — IPSS). As a consequence, the private pensions system which currently coexists with the public system may end up replacing it. The benefits provided to workers under the private pensions system include retirement and invalidity benefits, which are covered by *Parts V and IX of the Convention*, which have been accepted by Peru.

In this connection, the Committee considers it appropriate to recall the discussion held in the Committee on the Application of Standards (June 1996) on other social security Conventions ratified by Peru (Conventions Nos. 35 to 40). On that occasion, a Government representative stated that the maximum amount paid in retirement benefits under the public pensions system was absolutely insufficient and retained no relation to the worker's contributions. Another Government representative stated that after 40 years, it had been demonstrated that the public system in Peru was a real disaster and was collapsing.

Taking into account the above, the Committee trusts that the Government will re-examine its position and will be in a position to supply in its next report the information requested with regard to the matters raised in its observation of February-March 1995 concerning the *private pensions system* as it relates to the following provisions of the Convention:

Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in relation to Article 65). The rate of the pensions provided by the private pensions system does not appear to be determined in advance, since it depends on the capital accumulated in individual capitalization accounts, and particularly on the earnings from those accounts. The Committee recalls once again that, in accordance with *Article 29, paragraph 1*, in conjunction with *Articles 28 and 69*, an old-age benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution. The Committee would therefore be grateful if the Government would supply the statistics requested in the report form under Article 65 (Titles I and III) in order to enable it to make a full evaluation of the extent to which the old-age benefit, in all cases and irrespective of the type of scheme selected, attains the level prescribed by the Convention.

Article 30. Please indicate the measures which have been adopted or are envisaged to guarantee the full application of this provision of the Convention (payment of the benefit throughout the contingency) with regard to the "programmed retirement" system, under which monthly withdrawals may be made from the account until the accumulated capital is exhausted, in contradiction with the above Article.

Part IX (Invalidity benefit), Article 58. Please indicate how full effect is given to this provision of the Convention (payment of the benefit throughout the contingency or until an old-age benefit becomes payable) in the event of the permanent total invalidity of a worker who has selected the "programmed retirement" system.

Part XIII, Article 71, paragraph 1. The Committee notes that the cost of the benefits, certain administrative expenses and certain commissions are paid entirely by the worker who is insured under a pension fund administrator (AFP). Employers' contributions appear to be of a voluntary nature. According to *Article 71, paragraph 1*, "the cost of the benefits provided (...) and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected". The Committee once again requests the Government to indicate the measures which have been adopted or are envisaged to give full effect to the Convention in this respect.

Article 71, paragraph 2. The Committee recalls that, under the provisions of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. In order to be in a position to assess the effect given to this provision of the Convention, the Committee requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for the whole of Peruvian social security for the Parts of the Convention which have been accepted with regard to both the private pensions and health systems (when the private health system comes into force), and the schemes administered by the public scheme.

Article 72, paragraph 1. The Committee requests the Government to indicate the measures which have been taken or are envisaged, in the context of the private pensions system, to give effect to this provision of the Convention which states that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated with it in a consultative capacity, under prescribed conditions.

II. *System of pensions administered by the ONP.* The Committee notes that, according to the statement by the Government representatives to the Committee on the Application of Standards, the public pensions system is now ineffective and the benefits bear no relation to the contributions made by workers. In these circumstances, the Committee trusts that the Government will be able to indicate in its next report the measures adopted or envisaged to revitalize the public social security system, particularly with regard to pensions, in order to provide a real alternative to private schemes and to guarantee workers and their families protection against the risks of life in accordance with their needs, in conformity with the international standards ratified by Peru. In this respect, it draws the Government's attention to the specific following points:

1. *Part V (Old-age benefit), Article 29, paragraph 2.* The Government states that Legislative Decree No. 25967 of 1992, provides that no person insured under the national pensions system may obtain the grant of an old-age pension if he is not credited with contributions for a period of no less than 20 full years. In its opinion, Article 29, paragraph 1, provides that the benefit shall be secured to a person protected who has completed, prior to the contingency, a qualifying period which may be 30 years of contribution or employment. With regard to paragraph 2, the Government states that, in its opinion, where the benefit is conditional upon a minimum period of contribution or employment of 30 years, a reduced benefit shall be secured to a person who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment. The Committee notes this information and recalls that *Article 19, paragraph 1(a)*, refers to the maximum period of contribution, employment or residence which may be taken into account to determine whether the old-age benefit attains the level prescribed in the schedule annexed to Part XI (40 per cent of the reference wage for a standard beneficiary). *Paragraph 2(a)* sets out an additional obligation, under which, where the old-age benefit is conditional upon a minimum period of contribution, a reduced benefit shall be secured to any insured person who has completed a qualifying period of 15 years of contribution or employment. This obligation must be complied with irrespective of the fact that the period taken into account for the calculation of the pension is lower than 30 years. The Committee once again requests the Government to take the necessary measures to ensure that the persons protected benefit from a reduced benefit after 15 years of contribution, as provided by this provision of the Convention.

2. *Part XI (Standards to be complied with by periodical payments), Articles 65 and 66.* (a) Taking into account the statement by the Government representatives at the Conference Committee on the Application of Standards, referred to above in this observation, on the absolutely insufficient nature of the periodical payments made by the ONP, the Committee hopes that the Government will be in a position to indicate in its next report the measures which have been taken to guarantee a level of benefit that is in accordance with the provisions of the Convention in the schedule annexed to Part XI.

(b) With regard to the adjustment of the rates of current periodical payments in respect of old-age and invalidity, the Government states that, as the latest census of the population was undertaken in 1994, it is possible to carry out an actuarial study of the pensions and invalidity schemes administered by the ONP. The Committee takes due note of the above and trusts that the Government will be in a position to supply with its next report the statistics required by the report form under Title XI of *Article 65*, which are necessary to assess the changes in long-term benefits in comparison with fluctuations in the cost of living. The Committee wishes to recall once again the importance that it attaches to the revision of the rates of current periodical payments in the case of these benefits, as required by *Article 65, paragraph 10, and Article 66, paragraph 8*. Taking into account the statements made by the Government representatives to the Committee on the Application of Standards, the Committee considers that the measures to be adopted by the Government to review the rate of pensions are of particular importance (see also the following point III).

III. The Committee once again notes the observations made by occupational organizations concerning the difficulties arising in the payment of social security benefits due to individuals. The Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao, on 25 October 1995 and 16 September 1996, referred to a government strategy to tarnish the reputation of the national pensions system as much as possible. It states that the financial and economic resources of the IPSS should not be transferred to pension fund administrators. It refers to judicial decisions recording debts by the IPSS to pensioners.

In a communication dated 4 March 1996, the Government made its own comments on the matter and referred to a case before the competent courts in which a decision was pending. The Government states that no authority can comment on matters that are before a judicial body nor interfere in the exercise of its functions. The Committee trusts that the Government will transmit the definitive court decisions pending in the relevant cases and that it will ensure the full application of the relevant provisions of the Convention, and particularly of *Article 71, paragraph 3, and Article 72, paragraph 2*. The Committee recalls that, under the terms of *Article 71, paragraph 3*, the State has to accept general responsibility for the due provision of social security benefits and take all measures required for this purpose, and that in accordance with *Article 72, paragraph 2*, the State has to accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention.

IV. *Parts II, III and VIII* (in conjunction with Parts I, XI, XII and XIII). With regard to the conditions for the award and the duration of benefits, the nature of medical care and the level of cash benefits, the Government refers to the information provided in its report on the Sickness Insurance (Industry) Convention, 1927 (No. 24). The Committee refers to the comments that it has made under Convention No. 24 and trusts that the next report for the above Convention, which has been requested for 1997, will contain sufficient information to enable it also to examine the application of the Parts referred to of Convention No. 102.

V. The Committee notes the report of the tripartite Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution alleging non-observance of the Convention by Peru, which was adopted by the Governing Body in November 1995 (264th Session).

Taking into account the importance of the points raised, the Committee cannot but insist that the Government adopt as soon as possible the measures required to give effect to the provisions of the Convention. It requests the Government to include in its next report all of the information requested in this observation and the direct request.

[The Government is asked to report in detail in 1997.]

Spain (ratification: 1988)

Referring to its previous comments, the Committee takes note of the Government's report for Convention No. 102, as well as its reports submitted under Convention No. 24 and Convention No. 44. The Committee also notes the new comments of the General Union of Workers (UGT) on the application of Convention No. 44 and Convention No. 102. These comments, which also have an impact on the application of Convention No. 24, were transmitted to the Government on 21 November 1996. The Committee decided to defer its examination of them until its next session in order to consider the reports and observations together with the Government's first report on the application of the European Code of Social Security, and in light of all supplementary information which the Government may wish to communicate in this regard.

Switzerland (ratification: 1977)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report as well as in the annual reports on the application of the European Social Security Code.

Part VI (Employment injury benefit). (a) Article 38 of the Convention (in relation to Article 69(f)). The Committee notes with satisfaction the reversal of the case law relating to the direct applicability of the above-mentioned provisions of the Convention by the Federal Insurance Court (TFA) in its decisions of 25 August 1993 and 21 February 1994, the texts of which have been supplied by the Government. In its decision of 25 August 1993, the TFA considered that the provisions of international instruments which stipulate that cash benefits may be withheld where the contingency has been wilfully caused by the serious misconduct of the person concerned apply directly and take precedence over section 7(1) of the Federal Invalidity Insurance Act (LAI) in that this standard of federal law provides, in particular, for the reduction of benefits for serious misconduct committed by negligence. In a later decision of 21 February 1994, the TFA confirmed this case law by specifying that standards of international law also take precedence over section 37(2) of the Federal Accident Insurance Act (LAA), which provides for the reduction of cash benefits for invalidity if the insured person has caused the accident by serious negligence. Consequently, the Government concludes in its report that contrary to the provisions of the law, negligence, even when serious, is no longer sufficient ground for the reduction of benefits in the event of occupational accident or disease. The Committee also noted with interest the Government's statement made in regard to the European Social Security Code to the effect that, in the light of this new case law, the competent insurance bodies henceforth apply the provisions of the LAI and the LAA taking account of the relevant international standards. The Committee requests the Government to indicate in its next reports any amendments made to national legislation with a view to bringing it into full conformity with *Article 69(f)* of the Convention, for example, on the occasion of the next revision of the LAA or the adoption of the Act on the general part of social insurance law.

(b) In regard to its previous comments concerning *Article 34, paragraphs 1 and 2,* of the Convention, the Committee notes with interest Recommendations No. 7/90 of the ad hoc commission, accidents LAA, for the application of the LAA and the OLAA (Ordinance on Accident Insurance) relating to home nursing care, supplied by the Government in the framework of the Code and further to a decision of 9 January 1990 of the Federal Insurance Court. These Recommendations state that costs arising from medical care similar to that provided by nurses must be covered by the insurer if the physician considers that this "home nursing care" is necessary. The Government confirms in its report that, in practice, the insurers cover the total cost of such care. The Committee therefore notes, given the absence of any participation by the victims of occupational injury in the cost of nursing care at home, as the Government indicates, that the situation prevailing in Switzerland is in conformity with *Article 34* of the Convention. It requests the Government to indicate in its future reports any development which may arise in this regard, in both legislation and practice.

United Kingdom (ratification: 1954)

With reference to its previous comments which it has been making for a number of years, the Committee notes the information supplied by the Government in its reports of 1995 and 1996. It also notes the new comments made by the Trades Union Congress (TUC) concerning the application of this Convention, which were received on 28 November 1996. The Committee has decided to examine these comments, as well as the response of the Government which was received on 9 December 1996, at its next session. In addition, the Committee hopes that the Government's next report will contain detailed information on important issues raised in a new direct request.

[The Government is asked to report in detail in 1997.]

Venezuela (ratification: 1982)

Part II (Medical care), Article 9, and Part VIII (Maternity benefit), Article 48, of the Convention. The Committee notes the information supplied by the Government in reply to its previous comments concerning the scope of the general social security scheme. In particular, it notes with interest that the number of insured persons under the general scheme rose from 1,942,054 in 1994 to 2,516,680 in 1995. Furthermore, it notes that, according to the information contained in the Statistics Yearbook for Venezuela of 1994, the number of employees was 4,557,327 in 1994. The Committee therefore considers that the provisions of Articles 9(a) and 48(a) of the Convention can be considered to be applied, provided that the total number of employees remained constant in 1995. The Committee therefore hopes that the Government will be able to provide updated information in its next report both on the number of employees protected under the general social security scheme and on the total number of employees for the same reference period.

Part II (Medical care), Article 10, paragraph 1(a). In reply to the Committee's previous comments, the Government recalls that, in so far as medical care is concerned, the activities of the IVSS are governed by the Social Insurance Act and its general regulations. While noting this statement, the Committee once again draws the Government's attention to the fact that this legislation does not specify the types of medical care that must be provided to the protected persons, under the terms of Article 10, paragraph 1(a), of the Convention. It therefore hopes that the Government's next report will contain detailed information on the measures that have been taken or are envisaged to set out in the social security legislation or its regulations the types of medical care to be provided in accordance with this provision of the Convention.

Part VIII (Maternity benefit), Article 50 (in conjunction with Article 65) and *Article 52.* The Committee notes with interest that section 11 of the Social Insurance Act, as amended in the partial reform of 20 July 1991, henceforth provides that insured persons are entitled to medical care and a daily benefit during the maternity leave provided for by the law, and that the above benefit cannot be less than the normal wage received by the woman worker in the month immediately preceding the commencement of the leave. The Committee hopes that the Government's next report will contain detailed information on the measures taken or envisaged to bring section 143 of the general social security regulations into conformity with section 11 of the Social Insurance Act, as amended.

[The Government is asked to report in detail in 1998.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Belgium, Cyprus, France, Germany, Greece, Iceland, Italy, Libyan Arab Jamahiriya, Mexico, Netherlands, Norway, Peru, Senegal, Slovenia, United Kingdom, Zaire.*

Convention No. 103: Maternity Protection (Revised), 1952

Requests regarding certain points are being addressed directly to the following States: *Mongolia, Sri Lanka.*

Convention No. 105: Abolition of Forced Labour, 1957

Afghanistan (ratification: 1963)

The Committee notes the Government's report received on 26 June 1996.

Article 1(a) of the Convention. In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:

(a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;

(b) sections 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.

The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the above-mentioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the above-mentioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.

While noting the special status given to prisoners convicted under the above-mentioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention.

The Committee hopes that the penal provisions will be examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system and that the Government will indicate the measures taken to this end.

Bahamas (ratification: 1976)

Article 1(c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to sections 128, 130 and 134 of the 1976 Merchant Shipping Act under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work) and deserting seamen may be forcibly returned on board ship, and sections 72 and 73 of the Industrial Relations Act, under which participation in a strike is punishable with imprisonment, involving an obligation to perform labour, contrary to Article 1(c) and (d) of the Convention. The Committee notes that in a report received on 16 June 1994, the Government stated that while there had been no change in the legislation to fully comply with the Convention, it was expected that with a new Government having come into power in August 1992, there would be a review and reappraisal. However, in its last report, received on 5 September 1995, the Government has supplied no information concerning measures that may have been taken to amend the legislation at issue. In the circumstances, the Committee hopes that the necessary measures will at last be taken, and that the Government will soon be in a position to report concrete action to amend or repeal the above-mentioned provisions. The Committee is once more addressing a more detailed request on the matter directly to the Government.

Belize (ratification: 1983)

The Committee notes the information provided by the Government in its reports.

1. *Article 1(c) and (d) of the Convention.* In comments made for a number of years, the Committee referred to section 35(2) of the Trade Unions Act (Ch. 238), under which a penalty of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to work) may be imposed on any person employed by the Government, a municipal authority or by any employer in charge of supplying any city, town, village or place, or any part thereof, with electricity or water, railway, health, sanitary or medical services or communications or any other service that may by proclamation be declared by the Governor to be a public service, if he wilfully and maliciously breaks his contract of service, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community.

The Committee also has noted that, in pursuance of section 2 of the Settlement of Disputes Essential Services Act (Ch. 235), Statutory Instrument No. 92 of 1981 declared the National Fire Service, Postal Service, Monetary and Financial Services (banks, treasury, monetary authority), Airports (civil aviation and airport security services) and the Port Authority (pilots and security services) to be essential services, Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch, an essential service, and Statutory Instrument No. 32 of 1984 declared Revenue Services, including all Revenue Collecting Departments and Agencies of the Government to be essential services.

The Committee notes from the Government's latest reports that there have been no steps to bring section 35(2) of the Trade Unions Act into conformity with the requirements of the Convention.

The Committee recalls that under Article 1(c) and (d) of the Convention, legislation providing for sanctions involving compulsory labour as a punishment for violations of labour discipline or for having participated in strikes must be abolished.

As indicated in paragraphs 110, 114 to 116 and 123 of its General Survey of 1979 on the abolition of forced labour, the Committee has, however, taken the view that the Convention does not protect persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population), or which are committed either to the exercise of functions that are essential to safety or in circumstances where life or health are in danger. For the same services, functions and circumstances, participation in strikes would not be protected, provided that a prohibition is accompanied by compensatory guarantees in the form of adequate, impartial and speedy alternative dispute-settlement procedures. However, to justify the non-application of Article 1(c) and (d) of the Convention in such cases, there must exist an effective danger to safety, life or health, not mere inconvenience.

The Committee previously noted that section 35(2) of the Trade Unions Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services in the strict sense of the term, but also to others whose interruption would not endanger the life, personal safety or health of the whole or part of the population, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

Noting also the Government's repeated indication that there are no recorded penalties of imprisonment imposed under section 35(2) of the Trade Unions Act, the Committee again expresses the hope that the necessary measure will be taken to bring section 35(2) of the Trade Unions Act into conformity with the Convention as well as actual practice and that pending such action, the Government will continue to provide information on the application of this provision in practice, including any cases in which penalties of imprisonment have been imposed under this provision.

2. The Committee previously noted that under sections 221 and 225(1)(b), (c) and (e) of the Merchant Shipping Act, 1894, penalties of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to work) may be imposed for breaches of discipline such as desertion and absence without leave and disobedience, and sections 222 to 224 and 238 of the same Act as well as section 73(1) of the Harbours and Merchant Shipping Ordinance (Ch. 149) provide for the forcible return of seamen on board ship. The Committee previously also noted that the United Kingdom Merchant Shipping Acts, 1894, 1965 and 1974 are not listed in the Consolidated index of statutes and subsidiary legislation compiled in the framework of the West Indian Legislation Indexing Project (WILIP), and requested the Government to indicate whether these Acts and more particularly sections 221 to 224, 225(1)(b) and (c) and 238 of the 1894 Act have been repealed and, if so, to provide a copy of the repealing legislation. The Committee notes that no reply has been given to this request, and that the Government indicates in its latest reports that the Harbour and Shipping Act (which seems to correspond to the former Harbours Merchant Shipping Ordinance) has still not been amended. Referring to the explanations provided in paragraphs 117 and 125 of its above-mentioned General Survey of 1979, the Committee hopes that the Government will soon

be in a position to indicate that action has been taken to bring the merchant shipping legislation into conformity with Article 1(c) and (d) of the Convention.

Cameroon (ratification: 1962)

1. In earlier comments the Committee referred to the provisions of sections 113 and 157 (new) of the Penal Code under which "whoever by any means whatsoever incites to the obstruction of the execution of any law, regulation or lawful order of the public authority is liable to imprisonment for from three months to four years" (157); "whoever professes or propagates false information liable to injure public authorities or national unity is liable to imprisonment for from three months to three years" (113). Under section 154(2) "whoever, whether in speech or in writing intended for the public, incites to revolt against the Government and the Institutions of the Republic shall be punished with imprisonment for from three months to three years".

The Committee noted that section 18 (new) of the Penal Code (Act No. 90-61 of 19 November 1990) no longer refers to the penalty of detention (a penalty depriving someone of his freedom for a political crime or lesser offence during which convicts were not required to work) and that imprisonment with compulsory labour had replaced detention.

The Committee notes that in its report the Government indicates that section 157 of the Penal Code punishes any disturbance of the public order.

The Committee observes that, under the provisions of section 113, 154(2) and 157, penalties of imprisonment with compulsory labour under section 24 of the Penal Code may be imposed on persons who express certain political opinions or demonstrate their ideological opposition to the established political, social or economic order. It also notes that section 111 of the same Penal Code allows a penalty of life imprisonment to be imposed on "whoever attempts, in time of peace, by whatever means, to undermine the integrity of the territory" and that section 116 allows a penalty of imprisonment of from 10 to 20 years to be imposed on "whoever provokes or facilitates, during an insurrectionary movement, the assembling of the insurgents by whatever means (a); prevents by whatever means the convening, meeting or exercise of the authority responsible for public order or takes over such authority (b); appropriates public or private buildings (c)".

The Committee notes that under section 12 of Act No. 90-53 concerning freedom of association, associations may be dissolved by judicial decision on the initiative of the Legal Department or at the request of any interested party in case of nullity as provided for under section 4 of the same Act. Section 4 declares null and void associations founded in support of a cause or in view of a purpose contrary to the Constitution, and associations whose purpose is to undermine, especially security, the integrity of the national territory, national unity, national integration or the republican character of the State. Section 14 of the same Act provides that "the dissolution of an association shall not bar any legal proceedings which may be instituted against the officials of such association" and section 33 provides for imprisonment for from three months to one year for the board members or founders of an association which continues operations or which is re-established illegally after a judgement or decision has been issued for its dissolution. The same penalties apply to anyone who encourages meetings of members of a dissolved association by allowing them the use of his premises (section 34).

The Committee recalls that, as indicated in paragraphs 102 to 109 of its General Survey of 1979 on the abolition of forced labour, States which have ratified the Convention must abolish all forms of forced labour, including labour imposed as a consequence of a conviction in a court of law, in the cases provided for in the Convention.

The Committee also recalls that the protection provided by the Convention is not limited to activities expressing or demonstrating dissent within the framework of established principles. Consequently, the fact that some activities aim to bring about fundamental changes in the institutions of the State does not afford grounds for considering them to be outside the scope of the Convention, provided that violent methods are not used or advocated in the pursuit of the objective sought.

The Committee asks the Government to indicate the measures taken or envisaged to ensure that, in accordance with *Article 1(a) of the Convention*, the persons protected by the Convention, particularly as regards the expression of opinions in the press, political activities, and the right of association and assembly, may not be subjected to penalties involving compulsory labour. It also asks the Government to provide all information relevant to the application in practice of the above-mentioned provisions, including the number of convictions for violations of them, and copies of any judicial decisions which define or illustrate their scope.

2. In the comments it has been making for many years, the Committee has noted that under sections 226, 229, 242, 259 and 261 of the Merchant Shipping Code (Ordinance No. 62/DF/30 of 1962), certain breaches of discipline committed by seamen may be punished by imprisonment involving the obligation to work.

The Government had stated that studies were being conducted with a view to revising the Merchant Shipping Code and harmonizing national legislation and practice with the provisions of the Convention.

The Committee asks the Government to indicate the outcome of these studies, report on the progress made in revising the Merchant Shipping Code and supply information on the measures taken or contemplated to ensure that penalties of imprisonment involving compulsory labour may not be imposed on seamen for breaches of discipline that do not endanger the vessel or human life or health.

Cyprus (ratification: 1960)

Article 1(c) and (d) of the Convention. The Committee notes the information supplied by the Government, in reply to earlier comments, in its reports for 1992-94 and 1994-95, received in 1995 and 1996.

In the comments that it has been making for a number of years, the Committee has noted that section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Law (Chapter 175A) authorizes recourse to the provisions of Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services and, in particular, to secure their equitable distribution or their availability at fair prices, to promote the productivity of industry, commerce and agriculture, to foster and direct exports and reduce imports, to redress the balance of trade, and to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Defence Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work essential for any such purpose, not to terminate their employment or absent themselves from work or to arrive persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour), and Regulation 79B authorizes the Government to issue regulations to prohibit strikes on pain of imprisonment, by virtue of the provisions of Regulation 94.

The Committee has noted the Government's repeated statements in its reports, including the latest one received in 1996, that during the period under review no recourse was had to Defence Regulations 79A and 79B, which, however, can only be applied to the extent that they are not in conflict with the Constitution of the Republic of Cyprus and namely Articles 10 and 27 concerning forced labour and the right to strike respectively. Nevertheless the Government, prompted by the repeated observations of the Committee of Experts on this Convention and Convention No. 87, has proceeded with the drafting of new legislation regulating the right to strike in essential services. The Government adds that the report of the expert from the International Labour Office who visited Cyprus in 1995 to give advice on the draft law is currently being considered, and that every effort will be made to bring the legislation into conformity with the Convention, as soon as possible.

The Committee notes these indications with interest. As regards the prohibition of strikes in certain services, a number of comments on the provisions of the draft law that was appended to the Office expert's report are being addressed directly to the Government, in the hope that full compliance with Article 1(d) of the Convention will soon be achieved in law as well as practice.

As regards the restrictions on the termination of employment and the prison sanctions for violations of labour discipline that may be imposed under Defence Regulations 79A, the Committee hopes that measures will also be taken to ensure the conformity of the legislation with Article 1(c) of the Abolition of Forced Labour Convention, Article 2(2)(d) of the Forced Labour Convention, 1930 (No. 29), and that pending amendment of the law, the Government will continue supplying information on any instances of application on practice of both Defence Regulations 79A and 79B.

Fiji (ratification: 1974)

Article 1(c) and (d) of the Convention. In its earlier comments the Committee noted that under section 126 of the Marine Act No. 35 of 1986 a seaman who during an international voyage wilfully and persistently neglects his duty or disobeys lawful commands or combines with other seamen for the same purpose or for impeding the navigation of the vessel is liable to imprisonment for up to two years. Referring to paragraphs 110 and 117 to 125 of its General Survey of 1979 on the abolition of forced labour the Committee pointed out that the imposition of penalties of imprisonment, involving compulsory labour, for breaches of discipline or participation in a strike is incompatible with the Convention, except for offences which endanger safety of the vessel or the life or health of persons.

In its latest report, received in 1995, the Government indicates that the Director of Marine, to whom the matter had been referred for consideration of changes in the light of the Committee's comments, expressed the view that "the interpretation of section 126 of the Marine Act clearly deals with offences which endanger the safety of the vessel or the life or health of persons"; in his view, wilful and persistent neglect of duty and impeding navigation of the vessel may only result in endangering the vessel and the lives of the people on board. The Committee takes due note of this view. It also notes that "misconduct endangering a vessel or persons on board" is the specific subject of section 125 of the Marine Act, which has not given rise to comments under the Convention, while section 126 deals with "continual or concerned disobedience", without any reference to endangering the vessel or persons; moreover, it is not apparent how disciplinary offences such as wilful and persistent neglect of a non-security relevant duty, or participation in a strike while the ship is safely lying in a foreign harbour, should endanger the vessel and the lives of the people on board. Since, however, the Government seems to share the view that penalties involving compulsory labour should only be applicable to offences endangering the safety of the vessel or the life or health of persons, the Committee hopes that the necessary measures will now be taken to amend section 126 so as to clearly limit its scope, and that the Government will soon indicate the action taken.

Ghana (ratification: 1958)

1. *Article 1(a), (c) and (d) of the Convention.* In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. The Committee requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within Article 1(a), (c) or (d) of the Convention. The Committee also repeatedly requested the Government to supply information on the practical application of a number of legislative provisions.

In its report received in January 1994 the Government stated that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and it was the wish of the Government to bring the legislation concerned into conformity with the Convention and to inform the ILO accordingly through its next report on the subject. In its latest report, received in October 1996, the Government indicates that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' previous comments and had submitted recommendations to the Minister in March 1994, and that in line with the Government's desire to bring local laws into conformity with ILO standards, the present comments of the Committee of Experts have been submitted to the Attorney-General for a closer study and his expert comments. It is hoped that the Attorney-General's response will be received in time for incorporation in the next report.

The Committee takes due note of these indications. It hopes that the necessary action will at last be taken on the various points which are once more recalled in detail in a request addressed directly to the Government.

2. The Committee has noted the adoption of the Political Parties Law, 1992, the Emergency Powers Act, 1994, and the Public Order Act, 1994, which give rise to a certain number of questions under the Convention that are also set out in the request addressed directly to the Government.

Guinea (ratification: 1951)

1. For many years, the Committee has been commenting on certain provisions which are contrary to the Convention. In previous comments, it noted the Government's statement that the legal texts in question had fallen into abeyance and are due to be revised or repealed as part of the programme for the complete revision by stages of all laws and regulations. The Government stated that the following texts would be covered by this procedure:

- Decree No. 416/PRG of 22 October 1964, under which all persons between 16 and 25 years of age are placed in the service of the Organization for Works Centres of the Revolution, whose purpose is to overcome the technical and economic underdevelopment of the Republic;
- Act No. 45/AN/69 of 24 January 1969 respecting the disclosure of professional secrets and the unlawful communication of State and party documents;
- Act No. 64/AN/66 of 21 September 1966 to issue the Code of Criminal Procedure;
- and all legislation relating to prison labour, the maintenance of law and order, the press and publications, meetings and associations, vagrancy and idlers and the discipline of seafarers.

2. The Committee also referred previously to Ordinance No. 52 of 23 October 1959 laying down compulsory service, which may be military or non-military, for all male citizens. The Government indicated in earlier reports that there was no compulsory military service, but that students of both sexes performed one year's service devoted to military tasks; the Government also indicated that the service, which was compulsory, had become optional. The Committee noted that under sections 93 and 94 of the new Basic Act, promulgated on 31 December 1990 (Decree No. 250/90 and Act No. 2/91/001 of 1 August 1991, the Transitional National Recovery Council (CTRN) is empowered to enact legislation and take decisions with force of law. The Committee also noted the information supplied by the Government in its report in 1992 to the effect that a revision of the laws and regulations in use had begun. The Committee noted the Government's repeated affirmation of its political will to achieve the progressive harmonization of all the texts which are not in conformity with the Convention. In its last report, the Government indicates yet again that it has taken note of the Committee's comments and that all laws and regulations enacted before the adoption of the Basic Act will brought into line both with the provisions of the Act and with those of the Convention by the National Assembly which began its term on 5 October 1995. **The Committee hopes that the Government will soon report progress made in bringing the texts addressed in its comments into conformity with the Convention. The Committee asks the Government to provide information on the provisions adopted for this purpose and to provide copies of the relevant texts.**

Jamaica (ratification: 1962)

Article 1(c) and (d) of the Convention. In comments made for many years, the Committee referred to sections 221 to 224 and 225(1)(b), (c) and (e) of the 1894 United Kingdom Merchant Shipping Act which provide for the punishment of various disciplinary offences with imprisonment (involving an obligation to perform labour) and for the forcible conveyance of seamen on board ship to perform their duties.

The Government previously reported that the questions raised in relation to the Merchant Shipping Act were being studied and that the first draft of a Jamaican Bill on merchant shipping had been prepared which, it was hoped, was to be enacted before the end of the 1991 legislative year.

The Committee notes the indication made by the Government in its latest report, received in 1995, that in Jamaica, forced or compulsory labour was not used as a means of labour discipline, in spite of the provisions of the United Kingdom Merchant Shipping Act adopted by Jamaica in 1962, and that corresponding provisions have been removed from the final draft of the Jamaica Shipping Bill to be submitted to Parliament.

The Committee trusts that the Government will soon be in a position to report on the adoption of the necessary legislative changes and that it will provide a copy of the new Act.

Kuwait (ratification: 1961)

1. *Article 1(a) of the Convention.* For over ten years, the Committee has been referring in its comments to Legislative Decree No. 65 of 1979 respecting public meetings and gatherings, which establishes a system of prior authorization and, in the event of violations, provides for a penalty of imprisonment which involves, by virtue of the Penal Code, the obligation to work. The Committee noted that under section 6 of the above Decree, such authorization may be refused without giving reasons and that appeals against such refusal can be lodged only with the Minister of the Interior, whose decision is final. The Committee requests the Government to supply information on the application in practice of the provisions of Legislative Decree No. 65 of 1979, including the number of convictions for violations of these provisions and copies of court decisions that define or illustrate their scope, and to take the necessary measures to bring the above Decree into conformity with the Convention.

The Committee noted the Government's reiterated statement that the rules of law established by the State to assure public order are based on the sovereign right of States and that asking for the amendment of these rules represents an interference in the internal affairs of the country.

The Committee has noted on several occasions the importance for the effective observance of the Convention of legal guarantees respecting the right of assembly and the direct bearing that a restriction of this right can have on the application of the Convention. Indeed, it is often through the exercise of this right that political opposition to the established order can be expressed, and in ratifying the Convention the State has undertaken to guarantee persons who manifest this opposition in a peaceful manner the protection that the Convention affords them.

In its latest report, the Government states that the Constitution guarantees to individuals the right to hold private meetings without prior authorization and that public meetings which are peaceful and not contrary to morals are permitted under the conditions specified by the law, namely authorization from the governor of the district, which is subject to the requirements of public security. The Committee notes that this matter has been the subject of its comments for more than ten years and requests the Government to take the necessary measures to ensure observance of the Convention on this point.

2. In the comments that it has been making for more than ten years, the Committee has referred to Legislative Decree No. 31 of 1980 respecting security, order and discipline on board ship, under the terms of which certain breaches of discipline (unauthorized absence, repeated disobedience, failure to return to the vessel) committed by common agreement by three persons may be punished by imprisonment including the obligation to work.

The Committee noted that penalties imposed for violations of labour discipline or punishment for having participated in a strike do not come within the scope of the Convention where such acts endanger the safety of the vessel or the life or safety of the persons on board, but that sections 11, 12 and 13 of Legislative Decree No. 31 of 1980 do not limit the application of the penalties involved to such acts.

The Committee requested the Government to re-examine Legislative Decree No. 31 of 1980 in the light of the Convention and to indicate the measures taken to bring the legislation on merchant shipping into conformity with the Convention.

In its latest report, the Government refers to the need to be able to grant the captain of a vessel the necessary powers to maintain discipline and safety on board.

The Committee requests the Government to take the necessary measures to amend Legislative Decree No. 31 of 1980 in order to limit the imposition of penalties involving forced labour to cases in which the violations committed constitute a danger for the life or safety of the persons on board and to provide information on the progress achieved in this respect.

Liberia (ratification: 1962)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

> *Article 1(a) of the Convention.* 1. The Committee noted the entry into force on 6 January 1986 of the new Constitution which guarantees fundamental rights, in particular the right to freedom of expression (article 15), the right to assemble and to associate (article 17), and provides for the free establishment of political parties, subject to their being registered (articles 77 and 79). The Committee noted that under article 95 of the new Constitution any enactment or rule of law in existence immediately before the coming into force of the Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of the new Constitution, continue in force as if enacted, issued or made under the authority of the Constitution. The Committee referred to its previous comments in which it observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within Article 1(a) of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee requested the Government to state whether the above provisions continue in force and, if so, to indicate the measures taken or contemplated with a view to their repeal. The Committee also requested the Government to provide a copy of the Decree No. 88A of 1985 relating to criticism of the Government.
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> *Article 1(c) and (d).* 2. In earlier comments the Committee also referred to various provisions of the Maritime Law punishing breaches of labour discipline and of Decree No. 12 of 30 June 1980 prohibiting strikes. In the absence of a reply, the Committee again addressed a direct request on these matters to the Government.
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> 3. In its previous comments concerning Decree No. 12 of 30 June 1980 prohibiting strikes, the Committee noted the Government's statement in its report for 1982-83 that no penalty had been imposed for violation of the Decree and the statement by a Government representative to the Conference Committee in 1984 during the discussion of Convention No. 87 that the ban on strikes was due to be lifted on 26 July 1984.
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> The Committee observed that the Government's report contained no information in this regard. The Committee noted however from the conclusions adopted by the Committee on Freedom of Association concerning Case No. 1219 (in particular the 241st Report of that Committee) that the ban on strikes had not yet been lifted. The Committee requested the Government to provide information on any measures adopted or envisaged in this matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes the information provided by the Government in its report.

1. *Article 1(a), (c) and (d) of the Convention.* In the comments it has been making for a number of years, the Committee has referred to various provisions of the Publications Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

In its earlier comments the Committee noted the information supplied by the Government to the effect that Act No. 5 of 1991 on the application of the principles of the Green Book on Human Rights, and Act No. 20 of 1991 on the promotion of freedom, proclaim the right of each citizen to express his opinion, that part 2 of the Green Book prohibits penalties such as forced labour, and that the provisions of the Publications Act No. 76 of 1972 and of the Penal Code would be amended. It also noted that under section 2 of Act No. 5 of 1991, amendments must be drawn up within a period of one year.

In its latest report, received in 1995, the Government reaffirms its intention to amend the provisions of the Publications Act No. 76 of 1972, and the penal Code, referred to above, within the period of time prescribed in section 2 of Act No. 5, so as to ensure compliance with the Convention.

The Committee hopes that the amendments will now be made and that they will ensure that no penalties involving compulsory labour may be imposed as a punishment on persons who have expressed certain political or ideological opinions or who have committed breaches of labour disciplines or participated in strikes.

The Committee hopes that the Government will soon be in a position to supply a copy of the provisions adopted to this end.

2. In its earlier comments the Committee noted the information provided by the Government in 1992 in reply to its comments, to the effect that the Orders of the Higher Council of the Revolution of 1969, the texts of which it had been requesting, became null and void following the promulgation of Acts Nos. 5 and 20 of 1991.

The Committee noted that the text of Act No. 5 of 1991 had not been included in the list of texts transmitted by the Government and that section 35 of Act No. 20 of 1991 provides in general terms that all conflicting legislation is amended. It also noted that the Orders in question on the defence of the revolution (of 11 December 1969) and on trials for political and administration corruption (of 26 October 1969) are explicitly referred to in section 5(A)(8) of the Publications Act No. 76 of 1972. The Committee requested the Government to indicate the measures taken to formally repeal the texts in question and to transmit copies of the provisions adopted to this effect.

In the absence of a reply, the Committee again expresses the hope that the Government will supply copies of the Orders of 1969 or of any provisions repealing them, as well as copies of Act No. 5 of 1991 of the Green Book on Human Rights and the legislative texts governing the establishment, functioning and dissolution of associations and political parties.

Morocco (ratification: 1966)

Article 1(d) of the Convention. 1. In its previous comments concerning the penalties applicable to public servants in the event of a strike, the Committee noted that, under the terms of section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants, "any coordinated stoppage of work, any collective act of indiscipline may be punished without regard to the guarantees respecting discipline".

The Committee noted the allegations of the Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM) that the Government had recourse to the above Decree to threaten public servants and oblige them to work during strikes, and that in certain cases it had arrested teachers and health-care personnel.

With regard to this matter, the Committee noted the statements by the Government representative to the Conference Committee in 1992 to the effect that section 5 of Decree No. 2-57-1465 of 8 February 1958 corresponds to the principle of the continuity of the public service.

On this matter, the Committee refers to the explanations provided in paragraph 123 of its 1979 General Survey on the abolition of forced labour, in which it recalls that it is not incompatible with the Convention to impose penalties of imprisonment for participation in strikes in the civil service or other essential services, provided that such provisions are applicable only to essential services in the strict sense of the term, that is those whose interruption would endanger the existence or well-being of the whole or part of the population.

The imposition of sanctions involving compulsory prison labour breaches a general prohibition of the right to strike in the public service (section 5 of Decree No. 2-57-1465 of 8 February 1958) is incompatible with the requirements of the Convention, which prohibits the use of forced or compulsory labour, including compulsory prison labour, as a punishment for having participated in strikes.

2. The Committee has also noted the allegations made by the Moroccan Labour Union (UMT) in 1994, that the Secretary-General of the UMT officially lodged a petition with the Moroccan Government to repeal section 288 of the Penal Code, which provides that "anyone who, through violence, the use of force, threats or fraudulent activities has caused or maintained, or endeavoured to cause or maintain, a coordinated stoppage of work, with the objective of achieving by force the raising or lowering of wages, or jeopardizing the free exercise of industry or work, shall be liable to a sentence of imprisonment of from one month to two years (...)", on the grounds that it violates the freedom of work.

According to the UMT, section 288 of the Penal Code is frequently used by the courts to imprison members of the UMT on the grounds of their peaceful participation in strikes, the right to the exercise of which is nevertheless guaranteed by the Constitution. The UMT adds that the wording of section 288 is too general and that its systematic use constitutes a violation of the right to strike and a violation of the Convention, inasmuch as the Penal Code imposes compulsory labour on persons sentenced to imprisonment (section 28).

The Committee notes the information and explanations provided by the Government with regard to the constitutional guarantees of the right to strike and the freedom of work. In the observations that it has made on the matters raised by the UMT, the Government states that the annual number of strikes (356 in 1994, with the participation of 28,551 workers) and the diversity of sectors in which strikes occurred in 1995 (railways, phosphate industry and health) illustrate that the right to strike is recognized as a basic right of workers to defend their economic and social interests, but that, when exercising the right to strike, workers are bound to respect other fundamental rights, such as the freedom of work, which is also guaranteed by the Constitution.

With regard to section 288 of the Penal Code, the Government states that it constitutes a guarantee of the freedom of work and that the elements which violate this freedom are violence, threats and fraudulent activities.

The Committee notes that the matters which have been raised in the allegations made by the trade union organizations refer to the penalties imposed, which involve compulsory labour as a punishment for having participated in strikes; the penalties imposed under the terms of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize of public officials and sections 288 (violations of the freedom of work) and 28 (compulsory labour for those sentenced to prison terms) of the Penal Code.

With regard to the imprisonment of persons who have participated in strikes, on the grounds of violations of section 288 of the Penal Code (violations of the freedom of work), the Committee notes the conclusions of the Committee on Freedom of Association in the case of the complaint against the Government of Morocco submitted by the UMT (Case No. 1724) in which the Committee recalled that "taking part in picketing and firmly but peaceably inciting other workers to keep away from their workplace cannot be considered unlawful" (*Official Bulletin*, Vol. LXXVII, 1994, Series B, No. 2, paragraph 367).

The Committee also notes the frequent imposition of sentences of imprisonment upon workers who go on strike and notes in this respect the conclusions of the Committee on Freedom of Association in Cases Nos. 1687 and 1691 (complaints against the Government of Morocco, submitted by the UMT and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)), to the effect that "the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association" (GB.267/7, 267th Session (November 1996), paragraph 409).

The Committee hopes that the Government will take the necessary measures as regards section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants and section 288 of the Penal Code, to ensure that no form of forced or compulsory labour, including compulsory prison labour, is imposed in the circumstances covered by Article 1(d) of the Convention.

The Committee requests the Government to supply information on the effect given in practice to section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants and section 288 of the Penal Code, including the number of convictions over the past four years for violations of these provisions, and copies of court rulings that can define or illustrate their scope.

The Committee notes article 14 of the Constitution (Dahir No. 1-92-155 of 9 october 1992, enacting the revised Constitution), under the terms of which "The right to strike remains guaranteed. An organic Act shall set out the conditions and forms under which this right may be exercised." The Committee requests the Government to indicate whether the organic Act respecting the conditions for the exercise of the right to strike envisaged under article 14 of the Constitution (right to strike) has been enacted.

The Committee notes with interest, from the Government's report, that Dahir No. 1-94-288, of 25 July 1994, repealed the Dahir of 29 July 1935 which prohibited strikes that disturbed the public order and the respect due to the state authorities.

Pakistan (ratification: 1960)

The Committee notes the Government's reports received in March and December 1996.

I. *Article 1(a) of the Convention.* 1. In comments made for a number of years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10-13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 36, 56, 59 and 23, 24, 27, 28 and 30), and the Political Parties Act, 1962 (sections 2 and 7), which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

In its reports received in March and December 1996, the Government repeats its earlier indications that punishment under the Security of Pakistan Act, 1953, and the Political Parties Act, 1962, would be inflicted after fair trial by a court of law and the accused would be given full opportunity to defend and prove his innocence.

The Committee refers again to the explanations provided in paragraphs 102 to 109 of its General Survey of 1979 on the abolition of forced labour, where it indicated that compulsory labour in any form, including compulsory prison labour, falls within the scope of the Convention in so far as it is exacted in one of the five cases specified in Article 1 of the Convention. It is not merely the requirement of due process of law but rather the substance of penal provisions aimed at the punishment of political dissent with sanctions involving compulsory labour which is covered by Article 1(a) of the Convention.

The Committee notes the Government's indication in the report received in December 1996 that the Registration of Printing Press and Publications Ordinance, 1996, has been promulgated, and that efforts have been made in this Ordinance to fulfil the obligations under the Convention. The Committee understands that an Ordinance promulgated under article 89(2) of the Constitution is required to be laid before the National Assembly and shall be considered repealed at the expiration of four months from its promulgation if not approved by the Assembly. The Committee hopes that the Government will soon provide a copy of the 1996 Ordinance, as well as information on action by the National Assembly to approve the Ordinance, and on any measures taken to repeal the West Pakistan Press and Publications Ordinance, 1963.

In the absence of any new information concerning sections 10 to 13 of the Security of Pakistan Act, 1952, and sections 2 and 7 of the Political Parties Act, 1962, the Committee once again expresses the hope that the necessary measures will soon be taken also to bring these provisions into conformity with the Convention and that the Government will report on progress achieved.

Pending action to amend these provisions, the Government is again requested to supply information on their practical application, including the number of convictions and copies of any court decisions defining or illustrating the scope of the legislation.

The Committee also once more requests the Government to supply an updated copy of the provisions of the Jail Code governing prison labour.

2. *Article 1(a) and (e).* In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles shall be punished with imprisonment of either description for a term which may extend to three years.

The Committee has noted the Government's repeated statement in its reports that religious discrimination does not exist and is forbidden under the Constitution and the laws of Pakistan, and any law, custom or usage having the force of law, so far as it is inconsistent with the rights conferred by the Constitution, is void to the extent of the inconsistency.

According to the Government, religious freedom exists as long as the feelings of another religious community are not injured and anyone, regardless of his religious conviction, will be punished for professing his religion in a way that injures the feelings of another community. The provisions of the Penal Code referred to were drafted with a view to ensuring peace and tranquillity, particularly in places of worship. Forced labour as a result of religious discrimination does not exist in Pakistan, all minorities enjoy all fundamental rights and courts are free to uphold and safeguard the rights of minorities.

The Committee had also taken note of the report presented to the United Nations Human Rights Commission in 1991 by the Special Rapporteur on the Application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction (document E/CN.4/1990/46 of 12 January 1990) referring to allegations according to which proceedings were instituted, on the basis of sections 298B and C of the Penal Code, in the districts of Guranwala, Shekhupura, Tharparkar and Attock against a number of persons having used specific greetings.

The Committee further noted from the report by the Special Rapporteur presented to the Human Rights Commission in 1992 (document E/CN.4/1992/52 of 18 December 1991) the allegations that nine persons were sentenced to two years' imprisonment for acting against Ordinance XX of 1984 in April 1990, that another person was sentenced to one year of imprisonment in 1988 for wearing a badge and that the sentence was upheld by the Court of Appeal. It is also alleged that the Ahmadi daily newspaper has been banned during the past four years and its editor, publisher and printer have been indicted; Ahmadi books and publications have been banned and confiscated. Allegations also refer to the sentencing under section 298B and 298C of the Penal Code of two Ahmadis to several years' imprisonment and a fine of 30,000 rupees (in the case of failure to pay the fine, imprisonment would be extended by 18 months).

The Committee noted the Government's repeated indications in its reports that the report of the Special Rapporteur was not based on facts. The Committee therefore requested the Government to provide factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including the number of persons convicted thereunder and copies of court decisions made thereunder in particular in the proceedings mentioned by the Special Rapporteur, as well as copies of any court ruling that sections 298B and 298C are incompatible with constitutional requirements.

The Committee notes that the Government has not supplied the information requested on court practice to disprove the allegations noted by the Special Rapporteur. In its latest report, the Government indicates that the Quadianis were prohibited under sections 298B and 298C of the Pakistan Penal Code to use epithets, description and titles reserved for certain Holy Personages or places or posing themselves as Muslims, and that the main purpose of this restriction was to differentiate them and to prohibit them to preach the religion/faith as Islam after they were declared as non-Muslim. It would appear to the Committee that a restriction imposed for this main purpose and enforced with penalties involving compulsory labour falls within the scope of Article 1(a) and (e) of the Convention, which prohibits the imposition of penalties involving compulsory labour as a punishment for expressing views opposed to the established political or social system or as a means of social or religious discrimination.

The Government further states in its latest report that the Ahmadis have been accorded all rights and privileges guaranteed to non-Muslim minorities under the Constitution and laws of Pakistan, but that some religious practices of Ahmadis are similar to those of Muslims which arouse resentment among the latter and thus pose a threat to public order and safety. Consequently, the Government considers that it had to take certain legislative and administrative measures so as to maintain sectarian peace.

The Committee takes due note of these indications. Referring to the explanations provided in paragraphs 133 and 141 of its General Survey of 1979 on the abolition of forced labour, the Committee recalls that, as provided in the Universal Declaration of Human Rights, limitations may be imposed by law on the rights and freedoms enumerated in it "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". Thus, the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention.

The Committee therefore hopes that the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code to ensure the observance of the Convention.

3. *Article 1(d).* In its earlier comments, the Committee noted that under the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, which apply permanently to employment of whatever nature under the federal Government and provincial governments and any agency set up by the latter or a local authority and, inter alia, to any service related to transport, and which may in addition be applied by notification, inter alia, to employment in any educational autonomous body, employees are prohibited from striking, subject to penalties of imprisonment that may involve compulsory labour.

The Government states in its report received in December 1996 that the Act of 1952 is applicable to essential employments only for the purpose of securing the defence or security of the country and for the uninterrupted supplies and services essential to the life of the community, and that strikes are prohibited because the Government feels that if essential services are disrupted, the life of the community as a whole will be in danger. It also indicates that the list of essential services covered by the Act is minimum, and that the Government has adopted the policy of constant review and check of this list.

The Committee takes due note of these indications. It recalls that the Convention in Article 1(d) prohibits the imposition of sanctions involving compulsory labour as a punishment for having participated in strikes. None the less, the Committee has considered that Article 1(d) would not apply where the sanction is not imposed for the participation in a strike as such, but for the fact of endangering the life, personal safety or health of persons through a strike in a truly essential service. However, as recalled above, the scope of the Essential Services (Maintenance) Acts is far from being limited to services whose interruption would endanger the life, personal safety or health of persons. Referring also to Part III of its observation under the Forced Labour Convention, 1930 (No. 29), the Committee trusts that the Essential Services (Maintenance) Acts will be either repealed or amended so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.

II. The Committee observes that the Government's reports received in March and December 1996 do not contain any new information on the following points already raised by the Committee in its previous observation.

4. *Article 1(c).* In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) under which whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee expressed the hope that the Government would take the necessary measures to bring the Industrial Relations Ordinance into conformity with the Convention, by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population.

The Government previously indicated that a Bill to amend the Industrial Relations Ordinance had been presented to the National Assembly and that it was proposed to remove from the provisions of sections 54 and 55 the element of compulsory labour by replacing imprisonment with "simple imprisonment". This was confirmed by the Government representative to the Conference Committee in 1990. The Government has since indicated in its reports, up to the latest one received in December 1996, that the proposed amendment was under active consideration. The Committee trusts that the Government will soon be in a position to indicate that the Industrial Relations Ordinance has been brought into conformity with the Convention.

5. *Article 1(c) and (d).* The Committee notes the repeated assurances given by the Government up to its latest report that sections 100 to 103 of the Merchant Shipping Act, providing for the imposition of compulsory labour in relation with various breaches of labour discipline by seamen, will be amended. The Committee hopes that the necessary amendments will at last be adopted so as to remove the penalties involving compulsory labour from sections 100 and 100(ii), (iii) and (v) of the Merchant Shipping Act (or limit their scope to offenses committed in circumstances endangering the safety of the ship or the life, personal safety or health of persons) and to repeal the provisions of sections 101 and 102 of the Act under which seamen may be forcibly returned on board ship to perform their duties. The Committee hopes that the Government will soon be in a position to provide information on action taken to this end.

Senegal (ratification: 1961)

Article 1(c) and (d) of the Convention. For over ten years the Committee has been referring in its comments to sections 223 and 243 of the Merchant Shipping Code, under which seafarers may be punished for breaches of labour discipline (absence without leave, refusal to obey after formal order) with sentences of imprisonment involving compulsory labour under section 40 of the Penal Code.

The Committee notes that in its report the Government reiterates its previous indications that the provisions in question are currently being revised in the overall framework of the revision of the Merchant Shipping Code.

The Committee hopes that sections 223 and 243 of the Merchant Shipping Code will be amended in the very near future to ensure that no sentence involving the obligation to work can be imposed for breaches of labour discipline and requests the Government to indicate the progress achieved in this respect.

Sudan (ratification: 1970)

The Committee has noted the Government's reports received on 18 November 1994 and 23 October 1995.

Article 1(a) and (d) of the Convention. In its previous observations, the Committee noted that a state of emergency had been proclaimed in 1989 which extended the previous state of emergency, that the provisional Constitution of 1985 had been suspended and that persons convicted of offences against the regulations to give effect to the state of emergency of 1989 were subject, inter alia, to imprisonment. In 1994, the Committee noted that political parties remained prohibited and that a new Constitution was reported to be under examination, but had not yet been enacted.

The Committee also noted previously that Constitutional Decree No. 2 of 1989 imposed a prohibition on any strike, save by special permission and that under the Industrial Relations Act of 1976, participation in strikes is punishable with imprisonment whenever the Ministry of Labour has decided to submit a dispute to compulsory arbitration; under section 17 of the Act, the Minister, may, whenever he deems it necessary, refer the dispute to an arbitration tribunal whose award is final and without appeal.

Noting that under Chapter IX of the Prison Regulations 1948 (section 94) prison labour is compulsory for all convicted prisoners, the Committee had expressed the hope that the Government would take the necessary measures to ensure that penalties involving compulsory labour could not be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, or as a punishment for having participated in strikes.

In its 1994 observation, the Committee had noted the Government's statement in its report received in 1993 that the Prison Regulations of 1976 abolished forced labour and that sentences involving imprisonment did not include forced or compulsory labour. The Committee accordingly requested the Government to supply a copy of the Prison Regulations currently in force. In its reply, received 18 November 1994, the Government indicated that the present Prison Regulations would be sent as soon as received from the Prison Department; in addition, a new draft of the Prison Regulations had been prepared and submitted to the competent authorities for adoption and a copy of these Regulations was to be sent as soon as adopted. The Committee notes that neither the 1976 version of the Regulations nor a revised one has been supplied so far, and that the Government makes no mention of them in its latest report.

In the circumstances, the Committee is unable to ascertain that national legislation is compatible with Article 1(a) and (d) of the Convention. It again expresses the hope that the Government will supply the text of the Prison Regulations referred to earlier, as well as copies of the statutory instruments governing associations, political parties and the security of the State.

Article 1(b). In its previous comments, the Committee noted the triennial Economic Salvation Programme 1990-93. Referring to the recommendation of the National Congress of Economic Salvation that compulsory national service should be afforded moral and material support in order to direct human powers into building the national economy, the Committee noted the Government's statement in its report received in 1993 that the competent services had started to take practical measures to implement the recommendation by calling up the persons to whom the requirements of compulsory service apply; the Committee requested the Government to supply details of the measures adopted with a view to giving effect to the above recommendation.

In the absence of any reference to this matter in the Government's reports received in 1994 and 1995, the Committee once again requests the Government to supply full information on the call-up of "persons to whom the requirements of compulsory service apply", including the text of any applicable statutory or administrative provisions, so as to enable the Committee to ascertain that compulsory service is not being used as a means of mobilizing and using labour for purposes of economic development.

Article 1(e). With regard to the Government's obligation to suppress and not to make use of any form of forced or compulsory labour as a means of racial, social, national or religious discrimination, the Committee refers to its observation under the Forced Labour Convention, 1930 (No. 29).

Syrian Arab Republic (ratification: 1958)

Article 1(a), (c) and (d) of the Convention. In its earlier comments the Committee referred to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a means of political coercion or as a punishment for expressing views opposed to the established political system, and as a punishment for breaches of labour discipline and for the participation in strikes. For a number of years the Government has indicated that a draft Legislative Decree amending various sections of the Penal Code so as to eliminate all obligation to perform prison labour was being examined by the competent authorities.

In its latest report, received in 1995, the Government indicates that the said Legislative Decree has been approved by the Council of Ministers and submitted to the Ministry for the Affairs of the Presidency of the Republic. Since similar information had already been provided by the Government in its report received in 1986, the Committee hopes that the Legislative Decree referred to by the Government will at last be adopted and that the Government will soon provide a copy of the text adopted.

United Republic of Tanzania (ratification: 1962)

The Committee notes the information provided by the Government in its report.

Article 1(a), (b), (c) and (d) of the Convention. In its earlier comments the Committee referred to a number of provisions contained in the Penal Code, the Newspapers Act, the Merchant Shipping Act and the Industrial Court Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. It noted the Government's statement in its report received in 1992 that ministerial consultations aimed at amending the legislation referred to above were continuing, bearing in mind the political situation, following the adoption of the ninth constitutional amendment. The Constitution, as amended, has allowed for multi-party politics; and the Political Parties Act 1992 has provided specifically for formation and registration of political parties.

The Committee expressed the hope that the draft legislation under consideration would provide for the repeal of all provisions which are incompatible with the Convention and that the Government would indicate the action taken in this regard. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of different enactments to which it referred in its comments under Convention No. 29 and which are in contradiction with Article 1(b) of Convention No. 105.

The Government indicates in its latest report that proposals regarding amendment of the Merchant Shipping Act so as to bring it into conformity with the Convention have been submitted by the trade union to the Government for purposes of being tabled within the Labour Advisory Board (LAB) for consideration by the tripartite partners, and that the Government intends to supply information on the position of the LAB as soon as its work is completed.

In the absence of new information concerning the amendment of other Acts referred to above, the Committee again expresses the hope that the necessary action will be taken in the near future for the repeal of all provisions incompatible with the Convention, and that the Government will soon report progress made in this regard. The Committee is again addressing a more detailed request on the above matters directly to the Government.

Trinidad and Tobago (ratification: 1963)

The Committee notes the Government's report received on 4 November 1996.

Article 1(c) and (d) of the Convention. 1. In previous comments the Committee noted that the provisions of section 157(1)(b), (c) (erroneously referred to as (a)) and (e) of the Shipping Act, 1987 provide for penalties of imprisonment (involving, under rules 255 and 269(3) of the Prisons Rules, compulsory labour) for disobeying lawful commands and are substantially identical to provisions of the Merchant Shipping Act, 1894, which had been the subject of comments by the Committee for many years. Similarly, section 158 of the Shipping Act, 1987 follows the 1894 Act in punishing desertion and absence without leave with penalties of imprisonment involving compulsory labour. Finally, section 162 of the 1987 Act still provides for the apprehending and forcible conveyance of deserters on board ship upon the request of the master of the ship, regarding both seamen deserting in Trinidad and Tobago from a ship registered abroad and, by way of reciprocity, seamen deserting in a foreign State from a ship registered in Trinidad and Tobago.

The Committee noted from the Government's report for 1989-91 that the abovementioned provisions were being examined in consultation with the Minister of Works, Infrastructure and Decentralization entrusted with the administration and implementation of the Shipping Act, 1987, as well as with the Solicitor-General and from the Government's report for 1991-95 that additional measures to bring sections 157(1), 158 and 162 of the Shipping Act, 1987 into conformity with the Convention were still to be examined in consultation with the Ministry of Works and Transport entrusted with the administration and implementation of the Shipping Act, 1987, as well as with the Solicitor-General.

In its latest report, the Government states that sections 157(1)(b) and (e) and section 158 of the Shipping Act provide for penalties of imprisonment, but are governed by section 69 of the Interpretation Act and therefore *may* or may not be accompanied with the awarding of hard labour, and that the penalties are regarded at this time to be appropriate having regard to the peculiar nature of shipping and seafaring and the operation of vessels, where such offenses can have the effect of endangering the lives and safety of crews and vessels.

As regards section 162 of the Shipping Act, the Government states that there is no evidence that this provision provides for the imposition of compulsory labour. Trinidad and Tobago law states that this may only be imposed upon a term of imprisonment, which in turn is based upon a particular offence punishable by same. The purpose of this section is the recovery of deserters and their conveyance back to their respective States, where they shall face the necessary disciplinary and/or legal action. No fixed offence is prescribed under this section; no term of imprisonment is prescribed, and similarly no award of compulsory labour arises. The Government adds that it should be noted that there are similar provisions in UK legislation.

The Committee takes due note of these indications. As regards compulsory prison labour, the Committee must point out that not only the mere possibility of hard labour being imposed brings sections 157(1)(b), (c) and (d) of the Shipping Act into the scope of Article 1(c) and (d) of the Convention; moreover, as indicated in paragraphs 102 to 109 of the Committee's General Survey of 1979 on the abolition of forced labour, the Convention makes no difference between different forms of compulsory work, such as hard labour and ordinary prison labour; under rules 255 and 269(3) of the Prison Rules, a penalty of imprisonment always involves an obligation to work.

As regards the possibility of endangering the lives and safety of crews and vessels, the Committee recalls that endangering life or ship is the subject of a specific provision in section 156 of the Shipping Act, which has no bearing on the Convention. By contrast, while subsection (2) of section 157 of the Shipping Act excludes the application of subsection (1) to a lawful strike after the ship has been secured in good safety to the satisfaction of the master and the port authority at a port in Trinidad and Tobago, subsection (1) may still be applied to strikes outside Trinidad and Tobago as well as to breaches of labour disciplines which do not endanger the safety of the ship or the life or limb of persons.

The same is true for section 158. Finally, under section 162, deserting seamen are not conveyed "back to their respective States" but "on board the ship" where they are employed; as indicated in paragraphs 110 and 117 of the above-mentioned General Survey of 1979, forced or compulsory labour as a means of labour discipline may be of two kinds; it may consist of measures to ensure the due performance by a worker of his service under compulsion of law (in the form of direct physical constraint or the menace of a penalty), or of a sanction for breaches of labour discipline with penalties involving an obligation to work. The first kind is exemplified by section 162 of the Shipping Act, the second by section 157(1)(b), (c) and (e) and section 158.

As regards the Government's reference to UK legislation, the Committee has noted with satisfaction in its report to the 83rd (1996) Session of the Conference that the Merchant Shipping Act, 1988 (Commencement No. 4) Order 1994, has brought into force the provision of the 1988 Act repealing section 89 of the Merchant Shipping Act, 1970, which provided for the forcible return of deserting seamen on board ship under reciprocal arrangements with other countries.

Noting also the Government's indication in its report that there have been no cases to date concerning the practical application of sections 157(1)(b) and (e), 158 and 162 of the Shipping Act, the Committee hopes that the necessary measures will at last be taken to bring the Act into conformity with the Convention as well as actual practice, and that the Government will soon report on proposed amendments.

2. In its previous comments the Committee referred to section 8(1) of the Trade Disputes and Protection of Property Ordinance, under which penalties involving compulsory labour may be imposed for breach of contract by persons employed in certain public services where the probable consequences would be to deprive the inhabitants, wholly or to a great extent, of such services. The Committee observed that certain of the services mentioned in section 8(1) of the Ordinance (electricity, water, health, sanitary or medical services) are strictly essential because their interruption could endanger the life, personal safety or health of the whole or part of the population while in others (namely, railway, tramway, ship or other transport services) only a few posts essential to security might fall under the same category. The Government indicated that

no penalties involving compulsory labour had been imposed in the country for the purposes enumerated.

In its report received in June 1995 the Government once more indicated that the Committee's observations with regard to the Ordinance had again been noted and would be given full consideration. The Committee hopes that accordingly appropriate amendments will now be prepared and that the Government will soon report on the action taken to bring section 8(1) of the Ordinance into conformity with the Convention.

Article 1(d). 3. The Committee noted in previous comments that under section 69(1)(d) and (2) of the Industrial Relations Act, Chapter 88.01, teachers in the public service are prohibited from taking part in a strike, subject to penalties of imprisonment involving the obligation to work.

The Committee noted the Government's indication in its report for 1989-91 that the work of the Committee which was appointed to review all the Service Acts and their relevant regulations was still continuing. The Committee also noted that draft regulations to provide for a Code of Conduct for civil servants and for teachers had been prepared.

In its report received in June 1995, the Government again indicated that the work of the Committee which was appointed to review all the Service Acts and their relevant regulations was still continuing. The Committee hopes that the necessary action to bring section 69(1)(d) and (2) of the Industrial Relations Act into conformity with the Convention will now be taken and that the Government will report on the proposed amendments.

Tunisia (ratification: 1959)

Article 1(d) of the Convention. The Committee has been pointing out for many years that under the Labour Code participation in a strike is unlawful and may be punished by imprisonment (involving compulsory labour under section 13 of the Penal Code) where it has not been approved by the Central Workers' Organization (section 376bis(2); 387 and 388); and where the Government imposes arbitration, considering that a strike might endanger the national interest (section 384 to 388); similarly, workers may be requisitioned under penalty of imprisonment when a strike is considered to endanger the vital interest of the nation (section 389 and 390). The Committee pointed out that compulsory arbitration and requisitioning, enforceable by penalties involving compulsory labour, should be limited to essential services. It also observed that penalties involving compulsory labour should not be imposed for participating in a strike merely because it has or has not been approved by the Central Workers' Organization.

With regard to recourse to compulsory arbitration and requisitioning, the Committee notes with interest Act No. 94-29 of 21 February 1994 amending certain provisions of the Labour Code, under which arbitration is imposed only in the case of disputes affecting an essential service in the strict sense of the term (i.e. the interruption of which would endanger the life, personal safety or health of the whole or a part of the population). The list of essential services is established by decree. The Committee asks the Government to provide the list of essential services as soon as it has been adopted.

With regard to the provisions of sections 376bis(2), 387 and 388 of the Labour Code, under which participation in an unlawful strike (i.e. one which has not been approved by the Central Workers' Organization) may be punished by imprisonment (involving compulsory labour under section 13 of the Penal Code), the Committee notes that, in its last report, the Government confirms that a worker who participates in an unlawful strike is liable to a penalty involving prison labour, but considers that it is not forced labour.

Referring again to the explanations in paragraphs 128 to 132 of its General Survey of 1979 on the abolition of forced labour, the Committee observes that certain formal requirements concerning the circumstances in which a strike may lawfully be declared fall within the scope of the Convention in so far as they are enforced with sanctions involving compulsory labour. In this connection, the Committee refers to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it points out that the provision of section 376bis(2), under which a strike is unlawful unless it has been approved by the Central Workers' Organization, could restrict the right of first-level trade unions to organize their activities and promote and defend the workers' interests.

The Committee observes that the amendments introduced by Act No. 94-29 of 21 February 1994 to certain provisions of the Labour Code are not sufficient to remove all the discrepancies between the national legislation and Article 1(d) of the Convention, and asks the Government to take the necessary measures to ensure that penalties involving compulsory labour may not be imposed for participation in a strike on the sole ground that it has not been approved by the Central Workers' Organization.

Article 1(a). (a) For 20 years the Committee has been asking the Government to provide information on the application, in practice, of the penal provisions contained in sections 44, 45, 48, 61 and 62 of the Press Code of 1975. It noted previously that by virtue of the Law of Amnesty, No. 89-63 of 3 July 1989, persons sentenced or on trial for violation of the provisions of the press law, other than the provisions concerning privacy of the individual, had been released, and asked the Government to indicate all cases where the above-mentioned provisions of the Press Code had been applied and to include copies of judicial decisions handed down since the entry into force of the Law of Amnesty, so that it could ascertain that the practical application of these provisions was not affecting the implementation of Article 1(a) of the Convention. The Committee notes that, according to the Government's report, such information will be provided as soon as it is available.

(b) The Committee noted previously that under section 24 of Act No. 59-154 of 7 November 1959, as amended by basic Act No. 88-90 of 2 August 1988, the Minister of the Interior may request the dissolution, by judicial decision, of an association whose activities have a political object. Under sections 21 and 30 of the Act, whoever facilitates meetings of an association that has been dissolved or participates in maintaining or re-establishing such an association is liable to a penalty of imprisonment of from one to six months and from one to five years respectively. The penalties of imprisonment involve compulsory labour. The Committee asked the Government to provide information on the application, in practice, of these provisions and to enclose copies of judicial decisions defining or illustrating their scope.

(c) The Committee notes the provisions of Act No. 69-4 of 24 January 1969 relating to public meetings, processions, parades, demonstrations and gatherings, supplied by the Government. The Committee observes that under section 7 of this Act, the competent authorities may ban, by order, any meeting likely to disrupt the public order and safety, and that the only available remedy is appeal to the Secretary of State for the Interior, whose ruling is final. The penalty for offending against this provision is one to two months' imprisonment which is doubled in the event of a second offence (section 24). Section 8 bans meetings on the public highway under penalty of imprisonment of up to six months; the same penalty applies in the event of direct incitement to hold a meeting on the public highway, whether or not the meeting is held (section 25). Under section 12 of the same Act, the competent authorities may ban, by order, any demonstration likely to disrupt the public order and safety. This section provides for no means of resisting the decision, and the penalty is imprisonment of from three months to one year, to be doubled in the event of a second offence (section 26). The Committee stresses the importance, for effective observance of the Convention, of statutory guarantees of the rights of assembly, expression, demonstration and association, and the direct effects that the restriction of these rights can have on the application of the Convention. Often, the exercise of these rights is an expression of political opposition to the established order, and by ratifying the Convention, a State undertakes to guarantee the protection afforded by the Convention to persons who demonstrate such opposition peacefully.

The Committee asks the Government to take the necessary measures to ensure, in accordance with Article 1(a) of the Convention, that the persons to whom the Convention affords protection, particularly with regard to the freedom to express opinions in the press, and freedom of association and assembly, may not be subjected to penalties involving the obligation to work, and asks the Government to provide information on all progress made.

Uganda (ratification: 1963)

The Committee notes the information supplied by the Government in reply to its earlier comments.

1. *Article 1(a) of the Convention.* Further to its previous comments, the Committee notes with satisfaction that section 48 of the Press and Journalist Statute, 1995, has repealed the Press Censorship and Correction Act as well as the Newspaper, and Publications Act, section 21A of which had provided for the prohibition, enforceable with imprisonment (involving an obligation to perform labour) of the publication of any newspaper if the competent minister considered it to be in the public interest. It also notes with interest the adoption of the new Constitution of 1995 which contains in Article 29 provisions for the protection of freedom of expression (including freedom of the press and other media), religion, assembly, demonstration and association.

2. In its earlier comments the Committee referred to the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict, independently of the commission of any offence, an individual's association or communication with others, subject to penalties involving compulsory labour, the Committee noted the Government's indication that the Act was no longer being used in practice to detain people, but that its legislative revision was still going on, and that the Government would provide a report as soon as the revision was approved by Parliament. The Committee notes that the Government's latest report contains no new information on this subject. It again expresses the hope that the Government will soon be in a position to indicate that the Public Order and Security Act, whose repeal was reported since 1981 as being under way, has actually been repealed.

3. In its earlier comments, the Committee noted that sections 54(2)(c), 55, 56 and 56A of the Penal Code empower the competent minister to declare any combination of two or more persons to be an unlawful society (a power exercised in respect of various political, religious and student organizations by Statutory Instruments Nos. 12 of 1968, 153 of 1972 and 63 of 1973) and thus render any speech, publication or activity on behalf of or in support of any such association illegal and punishable with imprisonment (involving an obligation to perform labour). The Committee also noted that a number of orders made under these provisions between 1975 and 1977 were revoked by the Penal Code (Unlawful Society) (Revocation) Order, 1979, but that sections 54(2)(c), 55, 56 and 56A of the Penal Code appeared to remain in force and that by Statutory Instrument

No. 15 of 1991 a society was declared unlawful under section 54(2) of the Penal Code. The Committee requested the Government to provide details on this case and any other cases of prohibition as well as on the measures adopted regarding the above provisions to ensure the observance of the Convention.

The Committee notes that, while no such details have been provided so far, the Government states in its latest report that the above-mentioned sections of the Penal Code have been covered by the provisions of the new Constitution which supersedes all the other laws. The Committee accordingly hopes that the necessary measures will be taken to formally repeal or amend these sections of the Penal Code in the light of the new Constitution, in order to ensure the observance of the Convention, and that the Government will indicate the measures taken to this end. Pending amendment of the Penal Code, the Committee again requests the Government to provide details on cases of prohibition under the above provisions.

4. *Article 1(c).* In its earlier comments the Committee noted that, under section 16(1)(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, workers employed in "essential services" may be prohibited from terminating their contract of service, even by notice. The Committee noted the Government's statement in its report of 1995 that the section in question concerns collective withdrawal of contract by a number of workmen as a result of a trade dispute and does not stop an individual who has fulfilled his/her obligations and given due notice to terminate his/her services in a normal manner, to do so. The Committee recalled, however, that, under section 16(1)(a) of the Act, any workman in an essential service who wilfully *terminates* his contract of service, knowing or having reasonable cause to believe that the probable consequences of his doing so, *even alone*, will be to deprive the public or any section of the public of that service or to diminish their enjoyment thereof, is subject to penal sanctions. The provisions for termination by notice contained in section 17 apply only "where any collective withdrawal of labour from an essential service is contemplated", and thus would appear not to cover the case of termination by individual workers in the absence of a collective dispute. In the absence of a reference to this point in the Government's report, the Committee again expresses the hope that section 16 of the Act will be suitably amended to ensure that individual workers in the services concerned may duly terminate their contracts by notice.

5. *Article 1(d).* In its earlier comments the Committee noted that, by virtue of sections 16, 17 and 20A of the Trade Disputes (Arbitration and Settlement) Act, 1964, strikes may be prohibited in various services that, while including those generally recognized as essential ones, also extend to other services, interruption of which would not necessarily endanger the life, personal safety or health of the whole or part of the population, and the contravention of these prohibitions may be punished with imprisonment (involving, as previously noted, an obligation to perform work). The Committee noted that the process to review the law was still under way.

In its report of 1995, the Government indicated that the tripartite labour legislation review committee discussed section 16(a) and 17 of the Trade Disputes (Arbitration and Settlement) Act, 1964, in the light of their implicit denial of the freedom of association to those individuals working in "essential services" in the interest of protecting the public against danger to their lives. Although the sections exist in the law, in reality, strikes have occurred in essential services and no one had ever been victimized because of engaging in strikes in essential services; the Government added that nowhere was a penalty involving compulsory labour mentioned under these section. Section 20 of the Act empowering the Minister to certify essential services in case of doubt was also at the centre of the discussions for the law revision committee, which took into account the fears expressed by the Committee, in particular, the overstretching of the category of essential services. The Government concluded that it was not possible to provide a definitive response to the Committee's observations until the law revision process was finalized.

The Committee took due note of these indications. Concerning the compulsory labour following from a sentence of imprisonment, the Committee recalled that under section 46 of the Prisons Ordinance, 1958, every sentence of imprisonment passed upon any criminal prisoner shall subject the prisoner during the term of such sentence to be imprisoned and to work at such labour as may be directed by the officer in charge under the general approval of the Commissioner of Prisons. The Committee previously pointed out that the Convention does not prevent work from being made available to prisoners at their own request, to be performed on a voluntary basis. However, under the abovementioned provisions, an obligation to perform labour is laid down as an essential incident of punishment in the specific circumstances enumerated in Article 1(d) of the Convention. In the absence of further information on the law revision process in the Government's latest report, the Committee once again expresses the hope that the law revision process that has been referred to by the Government since 1979 will soon be finalized and that the Government will indicate measures taken to bring sections 16, 17 and 20A of the Trade Disputes (Arbitration and Settlement) Act, 1964, into conformity with the Convention, which prohibits the imposition of sanctions involving compulsory labour as a punishment for having participated in a strike.

Zambia (ratification: 1965)

1. *Article 1(c) and (d) of the Convention.* Further to its earlier comments on the 1971 and 1990 Industrial Relations Acts, the Committee notes with satisfaction the adoption of the Industrial and Labour Relations Act, No. 27 of 1993, which does not provide for penalties of imprisonment (involving an obligation to work) as a punishment for having participated in strikes, except in essential services, the list of which, given in section 107(10) of the Act, comprises only services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population.

2. In its previous comments the Committee referred to sections 221, 224 and 225(1)(b), (c) and (e) of the United Kingdom Merchant Shipping Act, 1894, as applied to Zambia by the Merchant Shipping (Temporary Provisions) Act, under which breaches of discipline not involving a danger to the ship or to the life or health of persons may be punished with sanctions involving compulsory labour and seafarers deserting their employment may be forcibly conveyed on board ship.

The Committee previously noted that a Draft Bill prepared by the Government omitted the forcible return on board ship of deserting seafarers and that a suggestion had been formulated by a direct contacts mission in 1989 to bring the clauses of the Bill dealing with disciplinary offences into conformity with the Convention. In its latest report, received in October 1995, the Government indicated that the drafting of legislative measures to replace the United Kingdom Shipping Act, 1894 as applied to Zambia by the Merchant Shipping (Temporary Provisions) Act, was at an advanced stage and would soon be presented for enactment into law. The delay was occasioned by a need for wide consultation on the form of legislation which would take into account the concerns so far raised by the Committee.

The Committee takes due note of these indications. It hopes that merchant shipping legislation will at last be brought into conformity with the Convention, and that the Government will soon be in a position to supply a copy of the new provisions adopted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Afghanistan, Angola, Bahamas, Belize, Bolivia, Burundi, Comoros, Cyprus, Dominica, Fiji, Ghana, Grenada, Guinea-Bissau, Islamic Republic of Iran, Israel, Latvia, Liberia, Lithuania, Mali, Pakistan, Papua New Guinea, Rwanda, Senegal, Seychelles, United Republic of Tanzania, Tunisia, United States, Zambia.***

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Bolivia (ratification: 1973)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observations on the need to take measures to give full effect to *Article 8, paragraph 3, of the Convention* concerning compensatory rest, the Committee referred to the Government's indication that the General Labour Law was in the process of revision with the technical assistance of the ILO. The Government indicates in its last report that there have been no changes with regard to the application of the provisions of the Convention. The Committee once again trusts that the new legislation will be adopted as soon as possible in order to ensure full compliance with the Convention. It also hopes that the Government will soon indicate the concrete steps taken in this regard and supply copies of the relevant legislative text.

The Committee again expresses the hope that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1969)

In comments it has been making for many years, the Committee has noted that under the terms of section 180 of the Labour Code, as amended most recently by Act No. 50 of 1990 to amend the Labour Code, a worker who as an exception works on the compulsory rest day may choose to benefit from compensatory paid leave or financial compensation. The Committee notes the Government's statement in its report that a Bill to amend the above provision is currently being examined. The Committee recalls that under *Article 8, paragraph 3*, compensatory rest of a total duration at least equivalent to the period provided for under *Article 6* must be accorded where temporary exemptions are made to the requirements concerning weekly rest. The Committee hopes that the Government will take the necessary measures in the near future to bring its legislation into conformity with the Convention and requests it to provide information on any developments in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Haiti.*

Convention No. 107: Indigenous and Tribal Populations, 1957

Brazil (ratification: 1965)

1. The Committee notes the additional oral and written information submitted by the Government to the Committee on the Application of Standards at the 83rd Session of the International Labour Conference in 1996. Just before the end of its session, it received the additional report requested by the Conference Committee, which the present Committee will examine at its next session.

2. *Invasion by "garimpeiros".* The Committee noted that certain groups of *garimpeiros* (independent gold miners were expelled from various regions, including the Alto Río Macajaí/RR, the Alto Río Couto Magalhaes, Parafuri and Uraruceera. However, noting that approximately 200 *garimpeiros* were still in the area in September 1995, principally in the Parafuri and Río Parima regions, the Committee requested the Government to continue supplying information on this matter. The Government representative informed the Conference Committee that the number of *garimpeiros* in the region as of October 1995 was around 3,000, as indicated by the written report submitted by the Government, but that this was an estimate since the *garimpeiros* were constantly crossing the border with Venezuela and it was difficult to monitor their movements due to the size of the Yanomami territory. Nevertheless, he stated that the Government would undertake joint action with the Government of Venezuela to tighten border controls. The Government also stated that the costs of a joint operation were high and it was hoped that the federal budget would be revised, since the Ministries concerned did not have the necessary resources available because they had not been allocated in the budget.

3. In this respect, a Worker member of the Conference Committee, quoting a delegation representing indigenous peoples (the Unity Council of Brazilian Indigenous Peoples and Organizations) reported that the number of *garimpeiros* was constantly increasing, instead of decreasing, in the Parafuri and Río Parima regions. Nevertheless, she noted that the principal concern of this delegation of indigenous representatives was the probable impact of Decree No. 1775/96 on rights in traditional tribal areas (see below) and that the rise in the number of invasions of indigenous territories was due to the above Decree.

4. *Decree No. 1775 of January 1996.* The Committee notes that since its last session, the Government has adopted Decree No. 1775 in January 1996. The Government representative informed the Conference Committee that the above-mentioned Decree supplemented Decree No. 22, respecting the administrative procedure for the demarcation of indigenous lands, and gave it a more solid legal basis in view of the fact that Decree No. 22 had been questioned by the Supreme Court for not contemplating the principle of administrative contradiction, as envisaged in the Constitution. Section 9 of Decree No. 1775 established the opportunity to appeal against decisions for the demarcation of indigenous lands which had not yet been regularized. Such appeals had to be filed within 90 days of the coming into force of the Decree and this deadline expired on 8 April 1996, when 531 appeals had been received concerning 90 of the 156 indigenous areas which could have been subject to such an appeal. Fourteen of these appeals were withdrawn shortly after being filed by the State of Rondonia, which related to lands in the Panafloro project. Seven appeals were lodged after the legal deadline, while 35 of the contested areas were already fully legalized and could not be the subject of an appeal. Another six appeals were rejected on the grounds that they had been lodged before the anthropological reports had been concluded and published. Of the 93 areas

which could have been challenged, only 45 were actually the subject of an appeal. The Ministry of Justice had one month to decide on the appeals and this examination was due to be concluded in July 1996. The Government representative stated that the demarcation process of areas which had not been the subject of appeals was continuing, and that 17 had had their limits defined by a Ministerial Order of 21 May 1996 and 38 other areas were awaiting demarcation. However, the resources required for demarcation were considerable and the Government was continuing its cooperation with international institutions and foreign governments to meet its financial needs.

5. The Government representative added that another 19 areas had been demarcated and were being submitted for ratification by the President, while 30 more areas which had already been ratified by the President would soon be registered, thereby completing the administrative procedures for their full legalization. In conclusion, 223 of the 554 indigenous areas had been demarcated and the corresponding procedures completed, which represented approximately half of the total mass of indigenous lands in the country.

6. The Committee notes with interest the detailed information supplied by the Government during the Conference and the publications on "Indigenous societies and government action" and the "National human rights programme" of the Ministry of Justice. The Committee is bound to deplore the fact that the invasion of indigenous lands, and particularly the lands of the Yanomamis, continues year after year, with the serious consequences that such invasions have on the health and survival of these peoples.

7. The Committee therefore requests the Government to provide detailed information in its next report on the situation as regards the invasion of indigenous lands by *garimpeiros* and others, including information on any arrangement that has been made with Venezuela in this regard. It also requests the Government to provide information on the results of the examination of the appeals lodged under Decree No. 1775, and on the definitive demarcation of indigenous lands. The Committee urges the Government to take all the necessary precautions to ensure that persons who are not members of these populations cannot use their traditional lands and, as envisaged by the Convention, to make available to these populations health services with adequate facilities to provide effective protection against the harmful effects which are often a result of these invasions.

8. *Articles 2 and 27 of the Convention* (responsibility for coordinated action). The Committee notes the information supplied to the Conference Committee concerning the Integrated Project for the Protection of the Lands and Indigenous Populations of Amazonia (PPTAL), which includes the pilot project for the preservation of tropical rain forests (PP-G7), financed by the G7 industrialized countries and administered by the World Bank through the Trust Fund for Tropical Rain Forests. The Committee notes that the general objective of this project is to protect and save the indigenous lands of Amazonia through specific support for the process of regularizing and protecting indigenous lands and by contributing to the harmonization of the traditional indigenous methods for the management of forests with appropriate environmental technologies. It also notes that it is the responsibility of the National Indian Foundation (FUNAI) to execute this project, but that the Government stated that the PPTAL does not include development projects or measures to increase the budget of FUNAI to undertake activities to assist indigenous communities. In this respect, the Committee requests the Government to report on the current status of the above-mentioned project and on whether it is planned to increase the budget of FUNAI for the implementation of the

project, as envisaged in the short-term activities of the National Human Rights Programme to assist indigenous societies.

9. The Committee notes with concern, as it has on several occasions, the lack of regular and adequate human and financial resources allocated to FUNAI and the consequences of this lack for indigenous populations. The Committee understands that the question of the financing of FUNAI has once again been raised. The Committee requests the Government to provide information on the current situation of FUNAI.

10. *Article 10* (protection of human rights). With reference to the Haximu massacre in July 1993, the Committee had noted that the judicial procedures were being pursued to bring those responsible to justice. The Committee notes that a hearing was held on 13 May 1996 (Trial No. 93 0574-0) with indigenous witnesses. The Committee once again requests the Government to continue supplying information on this matter, including any measure adopted to punish those responsible.

11. *Articles 11 to 14* (land). The Committee had noted the Government's comments on the information received from the Unique Workers' Central (CUT) concerning the displacement of indigenous populations due to the construction of hydroelectric projects in the Vale do Ribeira region. It had also noted that four hydroelectric projects were planned for this region, of which three were to be undertaken by the state enterprise (CESP) and the fourth by a private enterprise (Brazilian Aluminium Company — CBA). These projects would affect the Guaraní areas, which had been demarcated in the State of São Paulo (Agenor de Campos, Aguapeú, Guaraní de Barragen and Peruíbe). The Committee noted that consultations were being held between a non-governmental organization (Centro de Trabalho Indigenista), the Brazilian Institute of the Environment (IBAMA) and the Secretary of the Environment for the elevation of the affected areas. In this respect, the Committee requests the Government to provide more detailed information on the current situation as regards these hydroelectric projects and the opinion of the FUNAI, if it has been expressed, and particularly to indicate whether for the delivery of licences for projects of this nature it is necessary to carry out an evaluation of their effects on indigenous populations, for example in studies on their environmental or other impact.

12. *Article 15* (labour). The Committee had noted in particular the engagement of indigenous workers, including children, as sugar-cane cutters at a distillery in the state of Mato Grosso do Sul in slave-like conditions and that a complaint had been lodged against FUNAI for its involvement in the hiring of indigenous workers. The Committee requested the Government to supply further information on the measures adopted to secure proper working conditions for indigenous workers, including further information on whether regular inspections were carried out in areas where there are indigenous workers. The Committee also requested information on any specific measure that has been taken or is envisaged with respect to indigenous children working under exploitative conditions.

13. In relation to this matter, the Committee notes with interest the establishment of Mobile Inspection Teams with their respective national and regional coordinating units, which were created with the objective of investigating a greater number of complaints, thereby achieving greater effectiveness. The Government also stated that the emphasis placed on inspection in 1996 is concentrated on degrading forms of work, including forced labour and child labour, and that a number of raids have already been carried out in the sugar and alcohol production sectors. In certain states where there is a significant level of indigenous labour, such as the state of Mato Grosso do Sul, there is coordination between the state government, the municipalities and other structures involved in combating degrading forms of labour. The Committee also notes that the

regional labour delegation of this state organized a series of meetings with the concerned parties in order to discuss the problem of hiring indigenous workers for the 1996 sugar harvest, which gave rise to the establishment of a committee to revise the employment contract of indigenous workers to adapt it to the new realities of seasonal work. This includes the requirement that each distillery conclude an agreement with the Public Ministry of Labour to comply with the provisions of the new employment contract, which has the approval of FUNAI and came into force in April 1996 for a period of eight months. This new contract designates the parties by name and establishes the work to be performed, the duration of the contract, the date of payment directly to the indigenous worker, the payment of a fine of 10 per cent of the amount due in the event of non-compliance, the prohibition of withholding deductions from wages for housing, food and transport and the requirement to provide medical assistance, guarantees in respect of occupational safety and health and the observance of native customs, as well as the observance of guarantees provided for by the general labour legislation. FUNAI is the institution responsible for supervising compliance with these contracts. In this respect, the Committee requests the Government to provide information on the number of contracts concluded, a copy of the above-mentioned contract, the number of indigenous workers who have concluded such contracts and the number of violations reported for the period covered by the contract. The Committee also requests information on the numbers of cases of forced labour that have been ascertained involving indigenous persons.

14. *Articles 19 and 20* (health). The Committee notes the information provided by the Government in its publication "Indigenous societies and government action", and particularly the statement that the health of the indigenous populations does not in general terms show differences from the general condition of the national population. The Committee also notes the additional information provided by the Government on the various health plans for indigenous populations, which are more systematic, even though they are insufficient due to the lack of human resources. Nevertheless, the Committee continues to receive information on the health problems affecting the Yanomami due to the invasions of their lands by *garimpeiros*. According to a census carried out by the Yanomami Health District/National Health Foundation (FNS) in 1995, the Yanomami population in Brazil consisted of 8,268 persons at that time, spread over 188 communities in the states of Roraima and Amazonas. Over the past seven years, there have been approximately 2,200 deaths (accounting for around 21 per cent of the Yanomami population) as a consequence of the introduction of diseases such as malaria, respiratory diseases and tuberculosis, in addition to the violent conflicts with the *garimpeiros*. The general mortality rate of the Yanomami rose from 14.6 per cent in 1993 to 18.5 per cent in 1994 and the general fertility rate fell from 34.9 per cent in 1993 to 30.1 per cent in 1994. The report concludes that if the current patterns of health care and fertility and mortality trends continue, the Yanomami population is inexorably heading for extinction. In this regard, the Committee regrets that this situation, on which it has been commenting for a number of years, shows no signs of improving and urges the Government to take the necessary measures on an urgent basis to resolve in the shortest possible time the dramatic situation of the health services available to these populations, and particularly to the Yanomami, who are suffering the most from the invasion of their lands. The Committee suggests that the Government request international technical assistance in this regard. The Committee also requests the Government to indicate the institution that is responsible for organizing health services for indigenous populations, as envisaged by the Convention.

15. The Committee notes that Bill No. 2057 of 1991 on the status of indigenous societies is still under examination by the committees of the National Congress. It hopes that the Government will take all necessary measures to keep the Committee informed of the progress in the adoption of this Bill and will transmit a copy once it has been adopted. The Government representative in the Conference Committee indicated that the Government was considering favourably the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) which, in his opinion, showed its political will to comply with ILO standards on indigenous populations.

[The Government is asked to report in detail in 1997.]

India (ratification: 1958)

1. The Committee takes note of the communication sent by the Bijli Mazdoor Panchayat (BMP), a trade union, dated 2 May 1996 regarding alleged practices of "inhuman working conditions" by the Gujarat Electricity Board, affecting a large number of scheduled tribe workers. This communication states that the Board has a large thermal power station at Ukai, Taluka Songadh, District of Surat in the State of Gujarat, which discharges the ash and unburnt coal dust produced by the boilers in an area established by the Board called the "Ash Area" where 4000 workers, a majority of them women, are employed. All of them are stated to be *adivasis* or tribals. These workers are required to separate coal dust from the flowing water with which the boilers are cleaned. The recovered coal dust from the effluent is then sold by the Board.

2. The BMP states that the said "Ash Area" is considered to be a factory under the Factories Act. The workers are thus entitled to receive benefits under the Factories Act, but do not. It is stated that no drinking water is provided in the work area; there are no toilets, canteen or lunch room, and no creche. Workers employed in the "Ash Area" do not have identity cards as required by law, and do not get leave. They are said to be made to work 12 hours a day without any overtime wages, and the whole "Ash Area" is polluted with coal dust and flying ash. Workers do not have any protective or safety equipment. There is no salary registry and a total of Rs.20.00 (approximately 0.72 Swiss francs at the November 1996 exchange rate) is the daily wage of a worker.The communication concludes by stating that the Labour Inspectorate and other government agencies are silent spectators to this exploitation of labour.

3. The Committee notes that the Government has stated in reply — under this Convention and others — that the regular workers in the Thermal Power Station, many of whom are contracted labourers, enjoy normal working conditions, and that the BMP's comments relate only to workers outside the plant premises who are covered by no settlement and do not work for a registered contractor. These workers, known as "Mukadams", are paid on a piece-work basis. It indicates that several actions have been brought concerning the workers by the BMP, and that without conceding its legal responsibility to do so the Gujarat Electricity Board has provided basic facilities to these workers, and certain actions are under way as the result of labour inspections. As concerns Convention No. 107 in particular, the Government has stated that there is no special labour legislation for tribal workers, so no remarks are offered. The Committee recalls in this respect that under *Article 15 of the Convention*, ratifying States should adopt special measures for workers belonging to these populations "so long as they are not in a position to enjoy the protection granted by law to workers in general." As it appears at this stage that the situation of these workers is being dealt with in accordance with the general labour legislation, the Committee will take up the question under the

other Conventions concerned, and requests the Government to keep it informed of how the situation of these tribal workers is resolved.

4. The Committee also notes a communication sent by the Centre of Indian Trade Unions (CITU) on 16 May 1996, which states that the socio-economic development of tribal populations falls far behind the national average. These comments explore in some detail questions of agricultural and industrial development, health, education, labour, and eviction of tribal populations from areas in which mining, the construction of dams or other development projects are taking place. In reply to this communication the Government has provided detailed information on its efforts in favour of tribal populations. As this communication and the Government's reply in fact concern the implementation in practice of many of the Convention's provisions, the Committee examines both of them further in the request which is being addressed directly to the Government.

5. In its previous observation the Committee had noted that a Five-Member Group had been appointed to continue to review discussions initiated in June 1993 on the question of the *Sardar Sarovar Dam and Power Project*, concerning which the Conference Committee requested the Government to take urgent measures to bring its resettlement and rehabilitation policies for tribal people into line with the Convention. It requested the Government to provide information on the work of the Five-Member Group, including a copy of any findings it may have adopted. The Committee notes that the Government stated in its report that in July 1994 the Five-Member Group presented its findings which addressed, among other points, the question of resettlement and rehabilitation. The Group recommended that a plan for the resettlement and rehabilitation of project-affected people should be prepared immediately, if not available already. Grievances and redress mechanisms should be established, and assistance of voluntary agencies should be used. The Government, in response to the findings of the Group, indicates that the implementation of the resettlement and rehabilitation measures are being monitored closely by the Narmada Control Authority and Resettlement and Rehabilitation Sub-Group of Narmada Control Authority. Field visits are undertaken by the Sub-Group and reports are submitted quarterly to the Supreme Court of India as per its directives.

6. The Committee notes that the information provided by the Government on the progress of the resettlement and rehabilitation of the tribal populations affected by the Sardar Sarova Dam and Power Project up to April 1996 indicates that substantial differences continue to exist among the states. In Gujarat, over 4,300 of the 4,600 affected families have been resettled. In Maharastra more than 1,300 of the 3,113 affected families have not been resettled; while in Madhya Pradesh a little over 3,000 of the 33,000 affected families have been resettled. The Committee therefore once again requests the Government to ensure that the tribal people who have been displaced, or will be, are treated in accordance with the Convention and receive compensation in accordance with its requirements.

7. In addition to information on the actual progress of resettlement, the Committee had requested information on the rehabilitation and resettlement policies of the three above-mentioned states and on the manner in which the allocation of resettlement land takes into account the amount of land previously occupied by the displaced tribal population (the legal concept of "traditional occupation") including any measures taken or envisaged to compensate for different kinds of land use. In this regard the Committee notes with interest the copy submitted by the Government of the comparative table on the "*Entitlement of Rehabilitation Benefits as per the Narmada Water Disputes Tribunal (NWDT) Award and State-Wide Comparative Provisions*" (15 September 1992), which

compares the arrangements decided upon by those states concerned. In this regard, the Committee notes that the policies in the three states are, on most points, more favourable to the "oustees" (displaced persons) than the NWDT award, including as regards "encroachers" and "landless" oustees, though in the latter case there are fixed limits on the compensation offered. The Committee notes further the statements according to which resettlement and rehabilitation are designed to improve or at least regain the previous standard of living, guarantee relocation as village units, village sections or families, and other points. Finally, it notes the statement that in no event will any areas be submerged as a consequence of this project until all arrangements have been made for resettlement and appropriate compensation.

8. Thus, it appears that efforts have been made to provide for some compensation for lands occupied by tribal populations, even if the compensation offered is not in all cases fully in accordance with that provided for in *Article 12 of the Convention*. The Committee nevertheless remains concerned by the difficulty encountered in acquiring land and providing compensation, in particular in Maharastra and Madhya Pradesh. It therefore requests the Government to keep it fully informed of the progress achieved in this case.

9. The Committee notes also that there are other cases in which tribal people are displaced for development purposes, and hopes that the Government will provide information on the compensation offered in these other cases.

10. The Committee is addressing a request directly to the Government on other points.

[The Government is asked to supply full particulars to the Conference at its 85th Session and to report in detail in 1997.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Angola, India*.

Convention No. 108: Seafarers' Identity Documents, 1958

Russian Federation (ratification: 1969)

The Committee notes the conclusions and recommendations of the tripartite committee set up by the Governing Body to examine the representation made in March 1995 under article 24 of the Constitution by the Seafarers' Union of Russia alleging non-observance by the Government of the Russian Federation of the Seafarers' Identity Documents Convention, 1958 (No. 108). The report of the tripartite committee was adopted by the Governing Body at its 265th Session (March 1996).

In its recommendations, the tripartite committee asked the Government to submit a report under article 22 of the Constitution by September 1996. The Committee takes note that no report has been received and, therefore, reverts to the substantive text of the representation.

The Committee recalls that this representation was made following the refusal by a government official, the Master of the Commercial Seaport of Novorossiisk, to issue passports to seafarers assigned to work on vessels of the Association of Working Collectives of Placing Companies and Shipping Companies of Novorossiisk. The complainant organization considered that this action was taken in order to protect the commercial interests of the Novoship Company, a former state-owned shipping company, by refusing to issue identity documents to seafarers working for other companies, thus denying them access to work. In addition to the refusal to issue seafarers' passports, the complainant organization seeks relief from other practices in violation of the Convention, including:

(i) retention of the seafarers' identity document by the authorities;

(ii) requiring seafarers to apply for identity documents through the intermediary of Russian shipowners, and, in practice, through shipowners approved by the authorities;

(iii) failing to hold consultations with shipowners' and seafarers' organizations as to categories of persons to be regarded as seafarers.

The Committee notes that there is a distinction between the status and the activity of seafarers and, in this regard, considers that personnel whose presence is required on vessels engaged in maritime navigation, and who routinely earn their living in so doing, would ordinarily be entitled to the status of seafarer. The Committee recalls that in cases of doubt as to the categories of persons to be regarded as seafarers, *Article 1(2) of the Convention* requires the competent authority to consult with shipowners' and seafarers' organizations prior to taking a decision; the determination of status under *Article 1* being essentially an operative one. The Committee further notes that *Article 2* provides for recognizing this status not only during periods of activity but also, for example, when a seafarer is registered at an employment office in the national territory.

The Committee is aware that possession of the seafarer's identity document is a condition for employment on vessels, whether Russian or foreign, engaged in maritime navigation. It considers, therefore, that the requirements under *Article 2* that the seafarer must be able to apply in *his personal capacity* for issuance of the identity document, and under *article 3* that the document shall remain in the seafarer's possession at all times, are unambiguous.

The Committee, observes, however, that the issuance to and continuous possession of the identity document by the seafarer are distinct from the limited conditions under which the document may be used, and from the requirement of reciprocal or international recognition, as set forth in *Article 6*.

The Committee requests the Government to bring the national law and practice into conformity with its obligations under the Convention by: (i) acting on the points set forth in this observation, and (ii) implementing the recommendations of the tripartite committee. The Government is requested to provide information concerning the measures taken, in law and in practice, as well as the resulting changes.

In addition, a direct request regarding certain points is being addressed directly to the Government.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Guinea-Bissau, Russian Federation.*

Convention No. 111: Discrimination (Employment and Occupation), 1958

Afghanistan (ratification: 1969)

While a report has not been requested for the present session, the Committee has become aware that the authorities which have recently assumed control in the country have taken measures to ban the basic and further education of girls and to prohibit women from working. The Committee views these events with grave concern. It urges the Government to provide detailed information on these measures, which violate the basic human right of non-discrimination in employment and occupation embodied in this Convention.

Angola (ratification: 1976)

1. The Committee notes that the draft of the new General Labour Act, to which it referred in its previous comments, has been approved by the Council of Ministers and has been submitted to the National Assembly for final adoption. The Committee hopes that the Government will continue to keep it informed of the progress made in the adoption of this draft text and would be grateful to receive a copy of it when it has been adopted, as well as of any new regulation or Decree adopted in this field that is related to the principle of equality in employment and occupation embodied in the Convention.

2. With regard to its previous observation on the legislative protection against discrimination on the ground of political opinion, the Committee notes with interest the Government's statement that the term "ideology" contained in section 18 of Act No. 23/92 has to be understood as a synonym of the expression "political opinion". It also notes with interest the Government's statement that Decrees Nos. 2/95 and 3/95 of 24 March 1995 repeal Decree No. 17/89 of 13 May 1989 issuing the statutes of the Agostinho Neto University (which provided that the University Council shall ensure the political and ideological training of the University's administrative staff and graduates) and section 30 of Decree No. 55/89 of 20 September 1989 to approve the rules governing the University's teaching staff (which provided that the duties of teachers shall include assisting students in their political and ideological training). The Committee would be grateful if the Government would provide a copy of these new Decrees.

3. The Committee is raising other points in a request addressed directly to the Government.

Argentina (ratification: 1968)

1. The Committee notes the communication from the Coordinating Executive Committee of Workers of Salto Grande, in which it alleges violations of the Convention by the Government sitting on the Technical Mixed Commission (a binational body established for the common use and exploitation of the Uruguay River in the Salto Grande region). The alleged discrimination is based on the fact that Argentina has not ratified the Protection Wages Convention, 1949 (No. 95), which apparently results in discrimination against Argentinean workers in comparison with Uruguayan workers, since Uruguay has ratified Convention No. 95. It also notes the Government's reply, to which are attached the comments of the Technical Mixed Commission, which demonstrate that this body is an inter-state body of an international character that is outside the administrative structure of the two countries which established it. In this respect, after a close analysis of the facts, the Committee does not find the allegations consistent with the obligations incumbent upon a State that has ratified Convention No. 111 because they do not specify discrimination on any of the seven grounds covered by the Convention. It also recalls that it is the sovereign right of a State to decide whether or not to ratify an international Convention, and that this cannot be considered an act of discrimination in relation to the present Convention.

2. With reference to its previous comments, the Committee recalls that Congress was examining a possible reform of Act No. 22140 of 1980 respecting the basic terms and conditions of employment in the public service, and particularly the need to repeal

explicitly sections 8(g) and 33(g) (which provide that entry into the national public administration may be refused and public servants can be dismissed for belonging or having belonged to groups advocating the denial of the principles of the Constitution or for adhering personally to a doctrine of this nature). Noting that it has no recent information on this, the Committee trusts that the Government will keep it informed on this matter in its next report.

Brazil (ratification: 1965)

The Committee takes note of the Government's various reports and of the comments of the Trade Union of Workers in the Urban Industries of Rio de Janeiro and the Government's reply thereto.

1. The trade union, which covers electricity, gas and environment workers, claims that representatives of financial groups involved in the privatization of the electricity sector (notably the LIGHT-Electricity Services S.A. company), in particular CHILECTRA, have asked LIGHT, through the database of LIGHT employees, to give a selective identification of workers who are black, HIV positive, homosexual or suffer physical handicaps. The trade union considers that this is discriminatory behaviour which, in addition to violating the institutional and policy rules applying to the privatization process under way for LIGHT, directly contradicts the principles contained in the Brazilian Constitution. The trade union asks for support in stopping similar conduct during the privatization process. The Government's reply includes copies of press clippings relating to CHILECTRA's action and of the LIGHT employees' standard personnel form. It explains that LIGHT is a public enterprise whose principles for human resource management include entrance via public competitions in which the principles of legality, administrative morality, neutrality and publicity apply *a priori*. The Government stresses that the personal information that was supposedly requested does not appear in the personnel forms nor in LIGHT's employee database. The Chilean company has denied ever requesting this type of information, and LIGHT — in an explanatory note published in the major daily newspapers on 29 March 1996 — stated that its administration has strictly respected the procedures established by the managing bodies of the Privatization Programme as regards information and inspection visits. This explanatory note states: "No requests have been received for the supply of information as mentioned in recent press reports." The Committee notes from the copies of the employees' personnel form that information as to their colour, sexual orientation, HIV status or physical disabilities is not recorded on these forms. In view of this, the company's firm denial and the lack of details from the trade union, the Committee finds no support in the information supplied for the allegation that there has been discriminatory conduct contrary to the Convention.

2. *National policy against discrimination*. The Committee notes that in March 1996 the Government launched a "National Programme for Human Rights", which devotes specific chapters to equality for women, the black population, the disabled and indigenous populations, as well as action to give effect to international instruments including the Convention. Noting that the Ministry of Justice is given responsibility for the implementation of this National Programme and that State Governors are to make quarterly and annual reports on its application in respect of human rights in their States, the Committee would appreciate receiving, in the Government's next report, information on progress in fulfilling the objectives of this National Programme which are relevant to this Convention, namely equality of opportunity and treatment in employment and

occupation without discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin.

3. *Discrimination on the basis of race and sex.* The Committee has been examining the application of these specific aspects of the Convention in Brazil for a number of years, including a technical advisory mission by the Office to the country in October 1995. It takes note of the detailed information supplied in the Government's most recent reports relating to its renewed efforts to eliminate discrimination in employment on these grounds following that mission. In addition to the above-mentioned human rights initiative, the Government lists: the adoption of a Presidential Decree on 20 November 1995 establishing an Interministerial Working Group to design policies for the improvement of the situation of the black population (which meets regularly to discuss possible action and special measures towards equality of opportunity in the fields of education, labour, health, culture, religion, violence and racism); the passage of Presidential Decree No. 28 of 20 March 1996 to create a tripartite Working Group for the Elimination of Discrimination in Employment and Occupation (GTEDEO) which has been meeting regularly to discuss ways of implementing the Government's anti-discrimination policy, including Act No. 9029 of 13 April 1995; cooperation protocols signed between the Ministry of Justice (using as intermediary the National Council for the Rights of Women) and various other ministries for the improvement of vocational training, education, health and other prospects for women; the training seminar for "multipliers" (trainers) on gender and race issues (organized with ILO technical assistance in May 1996, aimed at sharing with the staff of various government ministries the results of successful affirmative action measures taken in the country for women and blacks); the planning, again with technical input from the ILO, of a major National Seminar on Discrimination for early 1997; and the continuing debate on draft legislation in the National Congress (for example, Bill No. 382-B/91 concerning, inter alia, women's access to the labour market and the granting of tax advantages to employers who give priority to female labour is now before the Senate; Bills Nos. 123/92 and 147/95 which are following their course through the Chamber of Deputies; and Chamber of Deputies Bill No. 715/95, and Senate Bills Nos. 542/91 and 129/95 which are still being discussed in Congress Commissions).

4. Noting that the GTEDEO is responsible for drawing up an action programme to develop an effective policy of specific measures to ensure better application of the anti-discrimination provisions of the national Constitution, the national legislation and the Convention, the Committee asks the Government to continue informing it of the work achieved by the GTEDEO. It would appreciate receiving, in particular, a copy of the final texts of the various Bills before Congress, and details of the plans drawn up for implementing Act No. 9029.

5. The Committee takes note in this connection of the report of the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance concerning his mission to Brazil in June 1995 which states "Employment is one field where there is overt racial discrimination" (UN document E/CN.4/1996/72/Add.1 of 23 January 1996, paragraph 48). He lists examples of discrimination in both access to jobs (newspaper advertisements) and terms and conditions of employment (a white worker earns 2.5 times more than a black worker, and four times more than a female black worker). The Committee welcomes the fact that references are made to the ILO Committee of Experts' past observations under this Convention. The Committee also takes note of the concluding observations made by the UN Human Rights Committee after examining Brazil's implementation of the International Covenant on Civil and Political Rights in which it "expresses its concern

over the situation of women who, despite some improvements, continue to be the subject of *de jure* and *de facto* discrimination, including discrimination in access to the labour market"(UN document CCPR/C/79/Add.66 of 24 July 1996, paragraph 13). The Committee trusts that the Government's political will to improve the situation of women and the black population will be strengthened by the above-mentioned efforts to eliminate race and sex discrimination in employment and occupation.

6. *Enforcement of the national policy on equality in employment.* The Committee takes note of the information supplied on the organization and functioning of the National Labour Council. The Council, of tripartite composition, advises the Minister of Labour, inter alia, on the implementation in Brazil of ratified international labour standards, and more particularly on policies for the promotion of employment and vocational training. The Government states that it will inform the Committee of its activities in respect of equality policies and the fight against discrimination. The Committee looks forward to receiving this information in the Government's next report.

7. The Committee would also appreciate receiving the information referred to in its previous observation concerning the training courses for labour inspectors, as well as their role in examining complaints of discrimination in employment on all the grounds listed in *Article 1, paragraph 1(a) of the Convention* (not only sex discrimination cases).

8. The Committee is addressing a request directly to the Government on other matters.

Costa Rica (ratification: 1962)

In its previous observation, the Committee had noted the comments of the Trade Union Association of Employees of the Public Customs Service dated 12 October 1995 (transmitted to the Government on 17 November 1995) on alleged favouritism of a "dominant class". The Committee notes the Government's reply on the points raised, denying any arbitrary treatment of public officials and explaining the situation in the Public Customs Service. However, regarding the principle of the Convention, the Government points out that no specific and objective information was supplied in support of the allegations and that none of the seven grounds of discrimination listed in *Article 1, paragraph 1(a)* were mentioned. In these circumstances, the Committee considers that the matters raised do not fall within the ambit of the Convention.

Czech Republic (ratification: 1993)

1. The Committee notes the information supplied in the Government's first report (which had arrived too late to be examined by the Committee at its last session), in particular the expression of the equality principle in the 1993 Charter of Fundamental Rights and Freedoms and in the 1991 Act on Employment, and the gender-neutral and politically neutral provisions of the statutes concerning education and training, such as the School Act of 1974, amended in 1994.

2. *Discrimination on the basis of political opinion.* The Committee notes the Government's reference to Act No. 451 of 1991 (the Screening Act, laying down certain prerequisites for holding management functions in state bodies), which was challenged before the Constitutional Court and which was the subject of a representation under article 24 of the ILO Constitution presented by the Trade Union Association of Bohemia, Moravia and Silesia (OS-CMS). In its previous observation, the Committee drew to the attention of the Government the conclusions of the committee set up to examine this representation, approved by the Governing Body at its 264th (November 1995) Session. The Governing Body committee found that there were incompatibilities between the

national legislation and the Convention, in particular with relation to the Screening Act which was declared to be applicable in the Czech Republic following the dissolution of the federated Czech and Slovak Republic. It deeply regretted the extension of Act No. 451 until 31 December 2000, and invited the Government:

(i) to repeal or modify any legal provisions which are incompatible with the Convention;

(ii) to take the necessary measures, including appropriate appeal procedures, to enable workers who suffered discriminatory treatment within the meaning of Convention No. 111 to obtain redress, including reinstatement in their jobs in appropriate cases, whatever their sector of activity;

(iii) to try to obtain the cooperation of employers' and workers' organizations and other appropriate bodies, in accordance with *Article 3(a) of the Convention*, for the adoption and implementation of the measures recommended above and, more generally, to encourage the acceptance and application of a national policy to eliminate all discrimination within the meaning of the Convention;

(iv) to have appropriate consultation with and recourse, if necessary, to the cooperation of the Office, in carrying out the above recommendations; and

(v) to provide complete information in the reports due under article 22 of the Constitution of the ILO on the measures taken to give effect to these recommendations, in order to enable the present Committee to follow up the situation.

3. This Committee asked the Government to report in detail in 1996 and looked forward to examining any additional information the Government might wish to provide on questions covered by the representation, as well as on the application of the Convention more generally. Noting that the Government did not send a further report, the Committee can only express the hope that information on the implementation of the recommendations made following the above-mentioned representation will be provided with the Government's report on this Convention next year.

4. The Committee notes that the Government's first report also refers to Act No. 216 of 10 July 1993 which amended the 1990 Higher Education Act by transforming the employment contracts of teachers and researchers into fixed-term contracts expiring on 30 September 1994, and thus required the holding of competitions for all jobs of higher education teachers, scientific workers and managers of educational and scientific higher education establishments. This legislation was also examined in the above-mentioned representation, but the Governing Body committee considered that it did not have sufficient information to evaluate it in relation to the requirements of the Convention. The present Committee notes the Government's statement that the measure was aimed at opening chances for all teachers and citizens who had suffered discrimination on political grounds in the period prior to 1989 and at ensuring high integrity education for the new generations of students. It also notes that, at the date of the report (November 1995), 1,021 managers' jobs (5.1 per cent being filled by external candidates) and 6,236 other jobs in universities had been filled by competitions under the amendment. The Committee observes that, from the information available, Act No. 216 contains provisions linked to political opinion and it notes that the Government's report itself recognizes the internal criticism of the new recruitment procedure. The Committee thus refers the Government to the recommendations of the Governing Body Committee set out above. Noting, however, that, according to the report, a change in the present system is envisaged in the draft of a new law on higher education, due to be discussed

in Parliament in 1996, the Committee requests the Government to include, in its next report, information on the parliamentary discussions. In particular, it would like to receive information on whether the debates result in the removal of the discriminatory elements from Act No. 216 and ensure that new recruitments proceed irrespective of the political opinions of candidates.

5. The Committee is addressing a request directly to the Government on certain other points.

Guinea (ratification: 1960)

1. The Committee notes that the Government's brief report does no more than repeat the information given in the previous report and contains no reply to the comments it has been making for a number of years. It therefore trusts that the Government will provide with the next report more detailed information on the progress made in bringing its national legislation into conformity with the 1990 Constitution and the Convention and that it will send copies of the codes, decrees, orders, decisions and collective agreements which are being prepared or revised once they have been adopted.

2. With regard to the public service in particular, the Committee notes that the Government repeats its previous statement that the public service regulations are still being harmonized with the new Constitution and the Convention. The Committee reiterates the hope that the Government will take into account its previous comments concerning amendment of section 20 of the Ordinance of 5 March 1987 on the general principles of the public service (which excludes discrimination only on the basis of philosophical or religious views and of sex) and the inclusion in the new revised regulations of all the grounds of discrimination set out in *Article 1, paragraph 1(a), of the Convention*. In this respect, the Committee draws the Government's attention to paragraph 58 of its 1988 General Survey on Equality in Employment and Occupation which states that where provisions are adopted in order to give effect to the principle contained in the Convention, they should include *all* the grounds of discrimination laid down in Article 1, paragraph 1(a), of the Convention.

3. The Committee is addressing a request directly to the Government on other points.

Islamic Republic of Iran (ratification: 1964)

1. The Committee takes note of the Government's detailed report and the attached documentation, as well as of the information (including statistics) supplied by the Government representative to the Conference Committee on the Application of Standards in 1996, and the discussion which followed.

2. At the end of that discussion, the Conference Committee's conclusions noted that the Government was ready to accept technical assistance from the Office and proposed that the Government invite a direct contacts mission to visit the country. The Government's report indicates that it wishes to pursue various technical cooperation measures with the Office: any type of cooperation with respect to the strengthening of the national policy on women; a seminar on the requirements of the Convention for national and provincial officials with duties related to its application; measures to strengthen further the national implementation machinery; activities to ensure that the provisions of the Convention are explicitly incorporated in the national labour regulations; and an exchange of views on the requirements of the instrument with members of the Labour Commission of Parliament. Regarding direct contacts, the Government states that it does not believe that the situation calls for such a mission,

which is usually undertaken in very special circumstances. It is of this opinion in particular because the Conference Committee, in arriving at this conclusion, had not had time to study the extensive written report submitted by the Government during its meeting and since the present Committee had also not yet had occasion to do so. The Government considers that its substantial reports and, in particular, the information on more recent developments will remove the problem of insufficient information on which the suggestion of direct contacts was based. The Committee notes the Government's approach to using technical assistance to overcome difficulties in applying the Convention. It looks forward to receiving, in the Government's next report, information concerning contacts made with the Office in this regard. It trusts that the activities undertaken by the Government will take into account the comments it has been making on discrimination on the grounds of religion and sex, which are developed in the following paragraphs. The Committee hopes that these technical cooperation activities will lead the Government to reconsider in the future the possibility of a direct contacts mission.

3. In its previous observation, the Committee had noted receipt of a communication from the World Confederation of Labour (WCL) alleging discrimination in the labour market on the bases of sex, religion and political opinion, and stated that it would examine this matter at its next session. The WCL, *referring to discrimination on the basis of sex*, cites statistics for the period 1976-91 showing that, while the general population had grown, the average number of women active in the labour market had dropped from 15.94 to 10.73 per 100 men. According to a report published by the Iranian Centre of Statistics, in 1994 in industrial enterprises there was an average of only 5.92 women working for every 100 men. The WCL mentions in particular section 1117 of the Civil Code according to which the husband may prevent his wife from taking up a profession or job contrary to the interests of the family or to his wife's or his own prestige. *Referring to discrimination on the basis of religion*, the WCL states that in an "Islamic Republic" all the laws and regulations concerning individual and collective rights and duties are subject to a religious bias, in particular as regards certain occupations and jobs which are closed to women. Referring to the constitutional recognition of one official religion and certain "recognized" religions, the WCL infers that priority in employment is given only to persons faithful to the official religion. It cites section 8 of the Recruitment Regulations for Employees of the Ministry of Agriculture, of 24 September 1995, awarding higher salaries to the faithful and devoted, a phraseology which it states refers to persons who voluntarily took part in recent wars and thus proved their faithfulness to the regime. It also cites job advertisements in newspapers which call for qualifications such as "belief in Islam", and alleges that recruitment techniques involve ideological tests. *With regard to discrimination on the basis of political opinion*, the WCL states that the legislation of 5 October 1995 concerning recruitment competitions for teachers and employees in the Education Ministry defines the "moral, religious and political criteria" for recruitment and lists "sympathy towards" illegal political parties and formations as proof of incompetence for recruitment by the Ministry.

4. The Committee notes that the Government replies in detail to most of these points. Regarding alleged discrimination on the basis of religion and political opinion, it responds that, regarding the legislation concerning recruitment of teaching staff of the Ministry of Education, it is important to note that teachers have a special responsibility concerning the education and development of children. The Act in question requires: belief in Islam or any other officially recognized religion (Christianity, Judaism and Zoroastrianism); commitment to Islamic principles for Muslims only (i.e. not for the

aforementioned religious minorities); commitment to the Constitution including the provisions concerning the system of government being an Islamic Republic based on the principle of *Velayat Faghig* (Islamic jurisprudence); not being publicly known for moral corruption; no penal record; no narcotic addiction; and no affiliation with groups which have been declared "illegal" by the competent authorities. The Government points out that employment in the private sector is not bound by any rules specifying religious criteria. However, it does not comment on the reported discrimination appearing in job advertisements. It states that proof of its successful non-discrimination policy lies in the fact that the unemployment rate for religious minorities is lower than the national and provincial average (for example, Zoroastrians in the Province of Yazd and Christians in the Provinces of Isfahan, Tehran and Western Azerbaijan). Other statistical evidence includes the number of new university entrants (in the 1995-96 intake, there were 39,801 male and 21,525 female Muslim and non-declared entrants, compared to 72 males and 47 females listed as "other religions"). Regarding their access to jobs, according to Public Employment Office's statistics, non-Muslims have a higher rate of job placement: in 1995, 97.84 per cent of workers actually finding jobs were Muslim and 2.16 per cent were non-Muslim, whereas of the total population only 0.5 per cent is non-Muslim. Concerning alleged discrimination on the basis of sex, the Government supplies a large amount of recent statistical data pointing to improved access to education and to employment which are referred to below. Regarding the WCL's reference to section 1117 of the Civil Code, the Government states that it should be interpreted in the light of the Constitution, article 28 of which ensures the right of all persons to choose freely an occupation, under equal conditions of access to jobs. It stresses the gender-neutral language used there. According to the Government, section 1117 appears under the part of the Code dealing with rights and obligations based on marriage, and is only mandatory for Muslim couples since sections 6 and 7 of the Civil Code exempt non-Muslims from this part of the Code as they are covered by their own religious codes in the field of marriage. Moreover, under section 18 of the Act on the Protection of the Family, either member of a couple — husband or wife — having a complaint linked to choice of occupation contrary to the interests of the family can take a complaint to the competent court. It stresses that this approach is in line with the phrase "appropriate to national conditions and practice" used in *Article 3 of the Convention.*

5. *Discrimination on the basis of religion.* Regarding the Committee's previous comments on the difficulties facing persons of faiths other than Islam gaining access to university education and sitting on Islamic Labour Councils, the Committee notes with interest the Government's explanations, noted in the previous paragraph, concerning non-Muslim university entrants. The Committee also notes the Government's clarification that, under section 178 of the Labour Code, workers have three options when seeking representation: they can establish trade unions, elect workers' representatives or establish Islamic Labour Councils. According to the 1996 statistics in the Government's report, this free choice has led to the establishment of 112 workers' organizations and 1,277 Islamic Labour Councils and the appointment of 537 workers' representatives. It notes, moreover, that the Government representative at the Conference Committee indicated that members of the recognized religious minorities could belong to the Islamic Labour Councils. The Government points out that groups not recognized as religious minorities in the Constitution enjoy all the constitutional rights guaranteed to other citizens, such as article 23 ("It is forbidden to question people about their beliefs and no person may be molested or reprimanded for the mere possession of a certain belief"). The Committee notes, however, that the information supplied by the Government does not throw light on improvements in the situation of the Baha'is who, as noted in observations

addressed to the Government for a number of years, have suffered discrimination on the basis of religion in access to education, access to employment and terms and conditions of employment.

6. While the Committee welcomes the fact that the Conference discussion clarified that the 1989 Directive No. M/11/4462 was in fact the document which repealed the previous, discriminatory Directive (concerning access of the Baha'is to the courts), and while the report explains that complaints of employment discrimination under the Labour Code can be made and are settled without any reference to the religion of the complainant, the Committee remains concerned at the situation of this religious minority. Its concern is reinforced by the fact the report of the United Nations Special Rapporteur on the question of religious intolerance (UN document E/CN.4/1996/95/Add.2 dated 9 February 1996), stated, following a December 1995 visit to the country, that the Baha'is whom he met claimed to be strongly discriminated against in the field of employment, especially in access to public service posts. The Committee would point out that while particular religious beliefs may be inherent requirements of certain jobs, this would not appear to be the case in most public service posts. It refers the Government to the comments it made concerning state religions in paragraph 41 of its 1996 Special Survey on equality in employment and occupation. It trusts that the Government will reconsider the situation in practice of the Baha'is, and will keep it informed of improvements in their educational and employment opportunities.

7. *Discrimination on the basis of sex.* The Committee notes with interest that the amendment to the Act on Appointments to the Judiciary was adopted on 1 May 1995: section 5 now states that "Women holding judicial rank who enjoy the qualifications as appointment as a judge ... can be admitted by the Head of the Judiciary, to the post of Councillor of the Administrative Justice Tribunal, to Special Civil Courts, as Investigating Judge, to the Bureaux of Legal Studies and Legislative Drafting, to the Department of Custody of Minors, and as Councillors of Legal Departments and other departments that have judicial posts". It also notes that, for the first time ever, a woman has been appointed as Deputy Director-General of Tehran Province Judiciary and Head of its Custody Department. According to the Government representative at the Conference Committee, there are currently 97 women serving throughout the country in various judicial positions.

8. The Committee notes the detailed 1995-96 data supplied by the Government indicating that female students are increasingly entering courses that were largely taken by men (19 per cent women in technical and mathematical sciences as against an overall figure of 35 per cent women enrolled in higher education day courses and 31.5 per cent as against 48.6 per cent for women enrolled in evening courses), and showing that the number of women entering the active labour force has steadily grown. It also notes the copy of the list of occupations which are forbidden to women under section 75 of the Labour Code (which had been raised during the Conference Committee discussion), including arduous and harmful jobs involving exposure to factors resulting in, or liable to give rise to effects of, occupational diseases. The Committee also notes the details provided on the national programmes established to promote the conclusions of the Fourth International Conference on Women, many of which will affect the application of the principle of the Convention. Noting that a national committee headed by a woman has been set up in the Bureau for Women's Affairs to implement these strategies, the Committee requests the Government to inform it, in its next report, of the results obtained by the various programmes.

9. During its session, the Committee received a communication from the International Confederation of Free Trade Unions (ICFTU), dated 29 November 1996,

alleging discrimination in employment. The Government has been sent a copy of this communication for any comments that it may wish to make. The Committee looks forward to receiving the Government's comments and will examine this matter at its next session.

Iraq (ratification: 1959)

1. The Committee notes the Government's reports and the information they contain in reply to its previous observation.

2. With reference to its previous comments relating to the application of *Article 2 of the Convention* in respect of linguistic and ethnic minorities in the country, the Committee recalls that this provision prescribes the formulation and application of a national policy to promote equality of opportunity and treatment in respect of employment and occupation and that, to implement the Convention, the legislative provisions in force must be accompanied by specific action, set forth in a precise manner, for implementing the principles of equality. The Committee notes that the Government restricts itself to repeating the legislative provisions in force and gives no indication on their practical application. It therefore requests the Government, once again, to supply detailed information on the application of a national policy on promotion of equality of opportunity and treatment in employment.

3. The Committee particularly requested information on the application of Article 2 of the Convention in respect of citizens belonging to the country's ethnic and linguistic minorities, such as the Kurdish and Turkoman minorities. It requested the Government to provide information on the extent to which these citizens were included in a national policy of promotion of equality of opportunity and treatment, noting that this issue had also been discussed by other bodies within the United Nations system, including the Committee on the Elimination of Racial Discrimination. In 1993, the Conference Committee had expressed deep concern about these minorities and asked the Government to provide information on their situation in practice and on how they were guaranteed equality of opportunity and treatment. Since then, the Government has not sent sufficiently precise and specific information to allow the Committee to form an opinion on the situation. Furthermore, it notes that at its 45th Session in August 1996, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution deploring the situation prevailing in the Kurdish and Shiah regions of the country.

4. The Committee notes that in its most recent report the Government mentions again the constitutional and legislative texts guaranteeing equality to all citizens, and the application of policies designed to implement these texts, without further details. The Committee would be grateful if the Government would supply detailed information concerning these policies and the measures taken, their nature and the results obtained in guaranteeing equality of opportunity and treatment to the Kurdish and Turkoman minorities. It also requests it to provide information on how the Convention is applied to other minorities such as the Shiah and Assyrian minorities.

5. As regards the employment of women, the Committee recalls that resolution No. 480 of 1989 concerning the employment of qualified women in the state administration and the socialist and mixed sectors, which prohibits certain occupations for women, was suspended by Decision No. 76 of 2 May 1993, of which the Government sent a copy with its most recent report. The Committee notes that pursuant to this text, another resolution will decide on the fate of resolution No. 480, namely, whether it will be

repealed or reinstated. The Committee requests the Government to inform it of the ultimate status of this resolution which prohibits access by women to certain occupations.

6. With regard to the statistics requested on distribution of men and women in employment, the Committee notes the tables transmitted by the Government on the vocational training courses held in 1994 by the General Federation of Iraqi Women and the people's training centres. The Committee also requests the Government to provide tables showing the proportion of men to women on these courses as well as statistics on the number of women occupying posts of responsibility in the public sector, in proportion to men, and their classifications. It also requests the Government to indicate whether programmes designed to promote employment of women have been implemented or are envisaged, and whether concrete results have been obtained in this direction.

Jordan (ratification: 1963)

The Committee notes the Government's reports and the information sent in reply to its previous direct request, as well as the appended legislation (Education Act, 1994; Protection of the Disabled Act, 1993; Criteria and Rules for the Selection of Government Employees issued under section 11, paragraph 11(b), of the 1988 Civil Service Regulations). It also notes the recently published new Labour Code (Act No. 8 of 1996).

1. In an annex to the Government's report on the application of the Equal Remuneration Convention, 1951 (No. 100), it is stated that Chapter 1, paragraph 8 of the National Charter provides that Jordanians of both sexes are equal before the law and that, as regards their rights and duties, there shall be no discrimination on grounds of race, language, or religion. The Committee has also received information to the effect that the National Charter, adopted in June 1991, is a reference document for constitutional purposes. It asks the Government to provide a copy of the Charter and to indicate where it ranks in the hierarchy of domestic legislation.

2. The Committee notes with interest that many provisions of the new Labour Code are in line with the objectives of the Convention: section 27 which bans the dismissal of women workers during the period from the sixth month of pregnancy to the end of maternity leave; section 67 which entitles women who work in enterprises with at least ten employees to take unpaid leave of up to one year in order to look after their children and to return to their jobs at the end of that period; section 68 under which all workers, both men and women, may apply for leave without pay of up to two years and return to their jobs at the end of that period, in order to accompany a spouse whose work takes him/her elsewhere; section 70 which provides for ten weeks' (formerly six) maternity leave for all women workers, no longer requiring a certain period employment in the same establishment; section 71 under which, for one year following confinement, a woman worker is entitled to a one-hour break, with pay, to breast-feed her infant; and section 72 which requires employers, in certain circumstances, to provide appropriate premises and a competent teacher for the care of children under 4 years of age.

3. In its Special Survey on Equality in Employment and Occupation of 1996, the Committee stressed that legislation on non-discrimination should be adopted as part of a policy on equality of opportunity and treatment in employment and occupation. It pointed out that special measures to protect maternity or the health of women are expressly recognized as non-discriminatory and are "always necessary", and suggested that certain provisions applicable to women to allow them to raise children or to care for them should increasingly be granted to men as well, so that the advantages granted cease to be an obstacle to women's competitiveness on the labour market (see paragraphs 131

to 133 of the above-mentioned Special Survey). The Committee therefore welcomes the significant improvements to the legislation which the above-mentioned provisions of the Labour Code represent, and suggests that the Government examine the possibility of extending to male workers, or granting to one of the two parents where both are employed, the right to one year's unpaid leave with reinstatement in their jobs, which is at present granted only to women workers under section 67.

4. The Committee notes with interest that the National Committee for Women is represented in parliamentary debates on issues likely to lead, directly or indirectly, to discriminatory behaviour against women. It also notes with interest that an ordinance of the Prime Minister, No. 55/93, requests all state departments and public institutions to apply the provisions of the National Strategy for Women, in the belief that such a measure is a demonstration of the Government's real determination to give effect to its declarations of intent concerning the policy of non-discrimination between the sexes. It notes in particular the information contained in the report on the activities of the National Committee for Women, including the recent adoption of a number of legislative provisions designed to reduce discrimination against women workers, especially with regard to social protection (extension of their social coverage to minor children and to invalid spouses) and maternity leave for public servants (extension from two to three months). The Committee welcomes these measures which are directly linked to employment, and the measure, also reported by the National Committee for Women, whereby, in a tenancy contract signed by the husband, the wife and children are considered original tenants. This measure has an indirect yet very important impact on the job security of women in the event of dissolution of the marriage. The Committee would be grateful if the Government would provide a copy of all the above-mentioned provisions with its next report.

5. Further to its previous comments, the Committee notes the extensive information in the report of the National Committee for Women, concerning measures to increase the number of women in employment. It notes that a number of women have been appointed as members of Municipal and Village Councils throughout the country; it also notes that, out of 8,689 women employees under the Ministry of Health, 945 were recruited in 1994 alone. The Committee would be grateful if the Government would complete the information for this sector by indicating, in its next report, the distribution of workers by sex and by job category.

6. The Committee notes that, in order to promote a policy of non-discrimination between the sexes, the programme of the first ten years of schooling highlights the double role played by women, within the family and as active members of society. The Government is asked to provide in its next report information on the implementation of this programme which, according to the report of the National Committee for Women, was to begin in the school year 1995-96. It is also asked to provide information on the technical committees which, according to the same report, were created in 1993 and 1994 in order to implement the strategy of the National Committee for Women by means of short- and medium-term programmes.

7. The Committee notes that the Government's report refers to a number of improvements in access to employment for persons with disabilities (the requirement for employers, in the circumstances laid down by section 13 of the Labour Code, to employ a certain number of persons with disabilities who have undergone vocational rehabilitation, and to report to the Ministry the jobs held by the people concerned and their respective wages). It asks the Government to indicate in its next report whether, in view of the fact that disability is not one of the grounds of discrimination listed in *Article 1, paragraph 1(a) of the Convention*, it plans to make an explicit determination,

after consultation with the employers' and workers' organizations, that it is an additional ground under *paragraph 1(b)* of the same Article.

8. *Article 3(a)*. The Committee notes the information supplied by the Government concerning efforts to secure the cooperation of employers' and workers' organizations to encourage acceptance of the national policy against discrimination. It notes the comments made by the Federation of Jordanian Chambers of Commerce to the effect that, although from the legal and procedural points of view there is no discrimination in employment and occupation, in practice the situation is different: "such discrimination will exist as long as labour market mechanisms do not function coherently". The Committee requests the Government to indicate the measures that have been taken to encourage employers' and workers' organizations to cooperate actively in promoting the acceptance and observance in the labour market of the policy of non-discrimination as required by this provision of the Convention.

Mauritania (ratification: 1963)

1. The Committee notes the information supplied by the Government concerning the follow-up given to the recommendations of the Committee established in 1991 to examine the representation alleging failure to apply the Convention, in particular the measures taken in practice to grant adequate compensation to black Mauritanian workers of Senegalese origin whose employment was adversely affected as a result of their being forcibly displaced in 1989 during the conflict with Senegal.

2. The Committee notes the indication that, after normalization of relations between Mauritania and Senegal, tens of thousands of Mauritanians have resumed their work without any risk to their safety or their belongings. As it requested in its previous observation, the Committee asks the Government to provide detailed information, including statistics, on the number of workers, especially public servants and state employees, who have resumed their work under the governmental occupational reintegration programme for workers who were victims of the events of 1989, referred to in previous reports.

3. The Committee also notes from the report that any worker who can justify any right in connection with his or her former employer has been able to resume the enjoyment of these rights without hindrance. The Committee requests the Government to confirm that these rights include retirement pensions and salary arrears in accordance with the decision in November 1993 of the Joint Mauritanian-Senegalese Committee. It requests the Government once again to provide with its next report detailed information, including statistics, so that progress made in implementation of this decision can be judged.

4. Noting from the report that administrative and legal means of redress are open to all persons who consider that they suffered prejudice in this field, the Committee requests the Government to communicate information on any administrative or legal appeals lodged and, if applicable, copies of any decisions relating to the application of the Convention.

5. The Committee is addressing a request directly to the Government on other points.

Peru (ratification: 1970)

1. The Committee takes note of the conclusions of the Governing Body Committee, appointed to examine the representations presented by the Latin American Central of Workers (CLAT) and the Single Confederation of Workers of Peru (CUT) against Peru

for non-observance of several Conventions, including Convention No. 111, which were approved by the Governing Body at its 267th Session in November 1996 (GB.267/15/2). The Committee notes that, as regards the alleged discrimination against trade union leaders on the basis of political opinion, it was recommended that the Government should in future take the measures necessary to ensure that dismissals which take place under the Promotion of Employment Act (No. 26513 of 27 July 1995) are not occasioned by the expression of political opinion, in particular by trade union leaders. As regards the alleged discrimination on the basis of sex, the Governing Body report states that, as information which might have thrown light on the general allegation that the new law was discriminatory had not been submitted, the Committee was not in a position to examine that aspect of the representations further. Noting, however, that the present Committee had asked for details of how programmes linked to the Promotion of Employment Act affect women's access to training opportunities in practice, the report expressed the hope that, in future reports on Peru's application of the Convention, the Government would provide all the details requested.

2. The Committee is addressing a direct request to the Government on this and other points.

Romania (ratification: 1973)

1. In its previous observation, the Committee noted the comments of the Hungarian Teachers' Federation of Romania (HTFR) concerning the Education Act (No. 84 of 1995), and, given that the Government's response to those comments was received only during the Committee's session, decided to make certain preliminary remarks and to examine the response at the present session. The Committee notes that the Government has sent, in the meantime, certain further information requested in that previous observation (on the employment situation of minorities, on compensation for past discriminatory practices and on the medical examinations of certain persons who had participated in the 1987 strikes).

2. The HTFR alleged that the Education Act introduces further restrictions on native language education and training of minorities which will affect their equality of access to employment. It mentioned, in particular, sections 8.1 ("Education at all levels is provided in the Romanian language. Classes in Romanian are organized and function in each locality"), 120.2 ("In lower secondary and in secondary schools, the history of Romanians and the geography of Romania are taught in Romanian on the basis of the same curricula and from the same textbooks as for the classes where tuition is in Romanian. [...] In primary school, these subjects are taught in the mother tongue"), 122.1 ("In the vocational, technical, economic, administrative, agricultural, forestal, mountain agricultural public secondary forms of education, [...] specialist training is provided in Romanian, assuring as far as possible, the learning of the technical terminology also in the mother tongue"), 123 ("In public university education, sections and groups with tuition in the mother tongue may be established, upon request and according to the present law, in order to train the necessary staff for teaching and cultural-artistic (*sic*) activities") and 124 ("In the education at all levels, admission and graduation examinations are taken in Romanian. Admission and graduation examinations may be taken in the mother tongue for schools, classes and specialization forms in which teaching is provided in the respective mother tongue, in accordance with the present law").

3. The Committee had previously noted that section 8 of the Act guaranteed the right of persons belonging to national minorities to learn and receive education in their

mother tongue, that section 119 permitted the establishment, taking into account local needs, of group classes, sections or schools with teaching in the language of national minorities, without prejudice to the learning of the official language and the teaching in this language (Romanian), and that section 120.3 mandated that the curricula and textbooks of universal history and on the history of Romanians reflect the history and traditions of the national minorities of Romania. It nevertheless expressed concern over the perception that the right to teach and learn in minority languages is being reduced, and over the apparently contradictory provisions in the Act.

4. The Government explains that the Act was the outcome of a four-year pre-legislative and legislative process, that it was adopted by a large majority in Parliament, and was elaborated taking into account the requirements of a number of European regional instruments and the Convention. In fact, according to the Government, the Act could constitute a main element of the national policy to promote equality under *Article 2 of the Convention*. It denies that the Act has shortcomings, and refers — as was noted in the Committee's previous observation — to the statement of the High Commissioner on National Minorities of the Organization of Security and Cooperation in Europe (OSCE) to the effect that the Act allows considerable flexibility in its implementation. Given that the HTFR cites no specific examples of discrimination against minority languages, the Government confines itself to replying to the HTFR's allegations, section by section. In particular, it explains that the reference in section 8.4 to "official school documents" having to be in Romanian is merely a reflection of the fact that all official/administrative documents (such as certificates attesting to scholarity or occupational diplomas) are drafted in the official state language, Romanian. The Government adds that section 8 contains no discrimination based on national extraction and concords with Recommendations Nos. 10 and 11 of the 1991 Report of the Commission of Inquiry established under article 26 of the ILO Constitution to examine a complaint alleging discrimination in employment on that ground. It refers to the concluding paragraphs of that Report concerning the balance to be struck in the teaching of the official and minority languages, and stresses that the Constitution of the country ensures such a balance.

5. The Government explains that section 120.2 constitutes the only exception to the right to take admission and graduation examinations in the mother tongue, provided for in section 124. Regarding section 122.1, the Government points out that there is no threat to the existence of mother-tongue vocational training schools since vocational training represents only a part of their curricula, whereas the entire spectrum of relevant subjects is covered in the minority language. In addition, it states, to accept a separate system of technical training in the mother tongues of the national minorities would be counter-productive to the aim of economic integration; society could be faced with "socio-linguistic disabilities" of such persons when they try to enter the labour market. Regarding section 123, the Government states that it is aimed at preserving minority languages, as is seen by the following sections: 125 (Ministry of Education to train teaching staff in their teaching language) and 126 (a proportional representation of teaching staff belonging to the national minorities is ensured on the managing boards of educational institutions). Section 118 of the Act is also relevant here, as it ensures the right of national minorities to study and receive instruction in their mother tongue at all levels and in all forms of education in accordance with the Act. The Government states that section 124 is in accordance with the equality provision of the national Constitution and Recommendation No. 9 of the 1991 Commission of Inquiry report (the need to adopt a language policy which, without prejudice to the status of Romanian as the official language of the State, would meet the cultural and economic needs of the minorities).

The Government encloses a copy of the Constitutional Court decision of 18 July 1995 attesting to the constitutionality of that Act.

6. The Government states that of the 29,241 pre-university school units, 2,820 (or 9.6 per cent) function as units or sections with tuition in the languages of such minorities; at the primary-school level, 73.5 per cent of the subjects included in the curriculum were taught in the mother tongue, at the junior high-school level, 75.4 per cent, and at the senior high-school level, between 60.2 and 82.8 per cent depending on the profile of the institution. According to the Government's brochure *Romanian democracy and ethnic minorities*, at the tertiary level, certain courses are taught in the languages of Hungarian- and German-speaking students upon their request. All students attending mother-tongue tuition schools have textbooks on the curricula subjects in their mother tongue. The teaching staff are trained in teachers' colleges with tuition in Hungarian and German, and "for the other minorities, there are forms with a pedagogical profile in high schools" (*sic*). Regarding vocational training, the Government cites the Regulations for the Organization and Functioning of Vocational Training and Apprenticeship, which ensure the teaching of terminology in the mother tongue. It also notes that, according to section 115 of the Regulations for the Nomination of Directors and Deputy Directors of Pre-University Educational Institutions, for minority language schools at least one of the management posts must be held by persons belonging to that minority having a good knowledge of Romanian or by persons having a good knowledge of the minority language involved.

7. The Committee is sensitive to the Government's explanation that the Education Act attempts to reach a difficult balance between preserving the official language and respecting the right of the country's ethnic minorities to learn and be taught in their mother tongues. It welcomes the statistics and documentation which the Government has collected (in the book of the Council for National Minorities *The Education System in Romania – Tuition in the Languages of National Minorities 1995-96 School Year*). However, the Committee is also aware of the HTFR's perception that the Act, through subtle restrictions spread across several different sections, could endanger the teaching of these languages, and thus have an impact on the equal employment opportunities of members of the national minorities. In the spirit of the Conclusions of the 1991 Commission of Inquiry, the Committee requests the Government to supply, in its next report, similar detailed information on how the Education Act is being applied in practice, so that the Committee can assess if the current language policy meets the cultural and economic needs of minorities while enabling them, if they so wish, to engage in trades and professions using their own language.

8. Turning to the points raised in its previous observation on the equality of employment opportunities of certain minorities, in particular the Rom and ethnic Hungarians, the Committee notes the statistics provided (based on the 1992 census) concerning the ethnic extraction, age and sex of the economically active population. It notes in particular the comparison of the current position of national minorities with their 1977 position: the number of economically active persons increased among ethnic groups which recorded population increases (Rom, Russians, Tartars and Turks), but decreased for those groups having an aging active population (Jews, Germans, Serbians, Slovakians and Bulgarians). The census shows that Romania's active population consists primarily of ethnic Romanians (90.8 per cent), the other nationalities making up 9.2 per cent of which 6.7 per cent belong to the Hungarian-speaking group. The Hungarian, Rom and German minorities are most represented in the secondary sector of activity, this denoting a marked change for the Rom in particular who had previously been engaged mainly in agriculture and forestry. While all minority groups are represented more or less equally

in the construction and industrial sectors, some groups are more highly represented in other sectors (for example, Armenians and Jews have almost no involvement in agriculture and forestry, but are strongly represented in other branches of the economy; ethnic Hungarians are strongly represented among construction workers and specialized operators, but only around 11 per cent were farmers).

9. The Committee notes the Treaty of Understanding, Cooperation and Good Neighbourliness concluded on 16 September 1996 between the Governments of Romania and Hungary; Article 15 of the Treaty deals with the rights and obligations of persons belonging to minorities. The Committee also notes that there have been slight improvements in the employment profile of the various minorities. It would appreciate receiving statistics more recent than 1992 so as to be able to assess the trends, particularly for the Rom and Hungarian minority communities.

10. *Article 2 of the Convention*. In its previous observation, the Committee had requested information on the adoption of the Bill on National Minorities, which could constitute a major part of the national policy aimed at ensuring the application of the Convention as well as of the Recommendations of the 1991 Commission of Inquiry. It had also asked for further information on the aims and activities of the minority joint commissions (such as the Romanian-German commissions mentioned in previous government reports) working in the context of the Council for National Minorities. As the Government provides no such information, the Committee can but repeat its request.

11. *Measures of redress*. For a number of years, the Committee has been following up on Recommendation No. 6 of the above-mentioned 1991 Commission of Inquiry report (requests for medical examinations made by persons who went on strike in 1987 and who have subsequently been rehabilitated by the courts). The Committee notes with interest that the Government supplies further details concerning a total of 31 persons who underwent such examinations and trusts that the Government will continue to supply information on this point in its next report.

12. Likewise, the Committee has been requesting the Government to provide details of persons who made claims for compensation under Act No. 118/1990 and Act No. 18/1991 for past discriminatory practices based on political opinion, social origin and national extraction. It notes that, according to the Government, 88 further cases of compensation have been granted to persons who took part in the 1987 strike. The Committee welcomes this information, but would again ask that the Government provide information on the measures taken to give effect to Recommendation No. 18 of the 1991 report (rebuilding of the houses destroyed as part of the systemization policy against certain minorities).

13. *Discrimination on the ground of sex*. The Committee, in its previous observation, had noted certain information on the employment opportunities of women contained in the Government's National Report on the Condition of Women, presented to the Fourth World Conference on Women (Beijing, 1995), and had asked the Government to inform it on the implementation of the various programmes aimed at promoting women's participation in production and management, as described in that National Report. The Committee has been supplied with a copy of Romania's National Plan for Action (NPA) for the Implementation of the Main Objectives provided for by the Final Documents of the Beijing Conference which aims, *inter alia*, (a) at developing the national machineries which are to coordinate the policies for the advancement of women; and (b) at improving the economic situation of women (for example, through special counselling for unemployed women who wish to (re-)enter the labour market; better correlation between training programmes and actual job demand; encouragement of women entrepreneurs in small and medium enterprises; improved network of social

services to support working women; harmonization of professional activity and family responsibilities by providing that both parents benefit optionally from the interruption of work to care for children). The Committee looks forward to receiving, with the Government's next report on the Convention, further information on the practical application of this NPA.

14. *Discrimination on the ground of political opinion*. The Committee's previous observation asked for information on the implementation in practice of the national policy against such discrimination, particularly as regards manifestations of differing political opinions. It expresses the hope that the Government's next report will contain this information.

Sierra Leone (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comment, the Committee had noted with interest that the new Constitution (Act No. 6 of 1991) no longer made provision for a one-party system and did not reserve certain high-level public offices for members of the recognized party, as had the Constitution of 1978. (The previous Constitution of 1961, which had included a general provision for the protection of fundamental rights and freedoms on most of the grounds of the Convention was suspended in 1968.) The Committee had also noted with interest that article 8(3) of the new Constitution directs state policy towards ensuring that every citizen, without distinction on any grounds whatsoever, should have the opportunity for securing adequate means of livelihood and adequate opportunities to secure suitable employment and that article 15 lays down certain fundamental human rights and freedoms for all individuals irrespective of race, tribe, place of origin, political opinion, colour, creed or sex. As there had been no progress towards enunciating a national policy to promote equality of opportunity and treatment in employment and occupation, as required by *Article 2 of the Convention*, the Committee had hoped that, in the light of the new Constitutional provisions and, especially, those of article 8(3), the Government would proceed to formulate a national policy, in consultation with the tripartite Joint Consultative Committee.
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> 2. In its reports, the Government states that, despite the suspension of the 1991 Constitution, the Government has a broad-based policy which ensures jobs for all who apply, regardless of sex, religion, ethnicity and political opinion. The Government also states that the Joint Consultative Committee has yet to make its final recommendations on a national policy. The Committee notes this information with concern. It recalls that in the 30 years since the Convention's ratification, the Government has reported consistently that no legislation or administrative regulation or other measures exist to give effect to the provisions of the Convention and that no national policy has been declared, pursuant to *Article 2*. With the suspension of the 1991 Constitution, there is no national legal instrument or formally declared policy in the country which provides any protection against discrimination. The Committee hopes that the Government will respect its obligations under the Convention. In particular, it trusts that a national policy on discrimination will be formulated, as required by the Convention, and that full details will be provided in the Government's next report, on the measures being taken and contemplated to apply the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Argentina, Azerbaijan, Barbados, Belarus, Bolivia, Brazil, Burkina Faso, Chad, Czech Republic, Dominica, Ethiopia, France, Ghana, Guinea,* *Haiti, Iceland, Kuwait, Liberia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Mauritania, Morocco, Mozambique, Netherlands, Peru, Poland, Qatar, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Swaziland, Sweden, Yemen.*

Information supplied by the *Islamic Republic of Iran* in answer to a direct request has been noted by the Committee.

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 2, paragraph 1, of the Convention.* Further to its previous comments regarding the absence of measures imposing minimum age of 15 years for employment in fishing vessels, the Committee notes the Government's statement in its most recent report that it now considers that Liberian Maritime Law and its sections 51(1) and 326(1) apply to fishing vessels, contrary to the position it had expressed since 1973 and the promises it had made to take measures to correct the situation. The Committee would be grateful if the Government would provide indications on the measures taken to apply the application of the provisions of the Maritime Law to fishing vessels.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 113: Medical Examination (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 2, 3, 4 and 5 of the Convention.* The Committee notes the Government's reply to the comments it had been making for many years on the need for legislation to give effect to Article 2 (requirement of a physical fitness certificate for employment on a fishing vessel), Article 3 (nature of the medical examination), Article 4 (period of validity of certificates) and Article 5 (possibility of a further medical examination). The Government indicates that it is the Liberian Requirements for Merchant Marine Personnel (RLM-118) which gives effect to the Convention. It further states that Liberian Maritime Regulation 10.325(2) gives effect to the other provisions of the Convention. The Committee refers to its comments under Convention No. 112 regarding the applicability of the Liberian Maritime Laws and Regulations to fishing vessels. It hopes the Government will also provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Committee would also be grateful if the Government would indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3, paragraph 1. In addition the Committee would be grateful if the Government would provide particulars on how due regard is had to the age of the person to be examined and the nature of the duties to be performed, in prescribing the nature of the examination as required by Article 3, paragraph 2.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 114: Fishermen's Articles of Agreement, 1959

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee refers to its previous comments and asks the Government to provide full information on each provision of the Convention and each question in the report form approved by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

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In addition, a request regarding certain points is being addressed directly to *Tunisia*.

Convention No. 115: Radiation Protection, 1960

Ecuador (ratification: 1970)

The Committee notes the information supplied by the Government in its reports of October 1994 and 1996. It also notes the observations made by the Central Ecuatoriana de Organizaciones Clasistas (Ecuadorian Central of Class Organizations) to the effect that provisions on radiation protection should be updated in the light of new knowledge. The Committee notes in this respect the Government's indications that new regulations on radiation safety have been prepared with employers' and workers' representatives. The Committee hopes that the Government will soon report the provisions which have been adopted and are applicable to all activities involving exposure of workers to ionizing radiations in the course of their work and in accordance with the dose limits mentioned in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and the Basic Safety Standards for Protection Against Ionizing Radiation and for the Safety of Radiation Sources of 1994, developed under the auspices of the IAEA, ILO and WHO, and three other international organizations, which are based on the ICRP Recommendations.

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In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Ecuador*.

Convention No. 117: Social Policy (Basic Aims and Standards), 1962

Brazil (ratification: 1969)

The Committee notes the observation made by the National Union of Labour Inspectors alleging non-observance of *Articles 4, 10, 11 and 12 of the Convention* concerning the situations of agricultural workers. The Committee requests the Government to supply its observations on the points raised, as it has already been invited to.

A direct request concerning certain other points is also being addressed to the Government.

[The Government is asked to report in detail in 1997.]

Syrian Arab Republic (ratification: 1964)

Remuneration of workers

In its earlier observation, the Committee pointed out that *paragraph 1 of Article 12 of the Convention* obliges the competent authority to regulate the maximum amount of advances on wages whenever made and whatever the reasons therefor. The Committee recalled that the present provision of section 51 of the Labour Code only regulates the manner of repayment of advances on wages, and requested the Government to take necessary measures in this regard. The Committee noted in particular that the version of the draft legislative text attached to the Government's report dated 20 April 1994 did not include the provisions proposed in earlier versions to become section 51(b) of the Labour Code in order to fix the maximum amount of advances on wages whatever the reason therefor.

The Committee notes the Government's indication in the report that measures have been taken to withdraw the present draft to amend the Labour Code, so as to provide for the limitation of the maximum amount of advances on wages made not only to a worker in consideration of taking up employment but also advances on wages made for whatever reason during the employment.

The Committee trusts that the Government will take in the very near future necessary measures to give full effect to this provision of the Convention, on which it has been commenting since the ratification. The Committee requests the Government to indicate any progress made and to supply a copy of adopted amendments.

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In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Central African Republic, Ghana, Jamaica, Zaire.*

Convention No. 118: Equality of Treatment (Social Security), 1962

Barbados (ratification: 1974)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee refers to its previous comments in which it pointed out that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations 1970 which deprive a beneficiary, when residing abroad, of his right to ask for his benefit to be paid directly to him at his place of residence, are contrary to the provisions of *Article 5 of the Convention*. Under this provision of the Convention, Barbados, which has accepted the obligations for branch (e) (old-age benefit), branch (f) (survivors' benefit), and branch (g) (employment injury benefit), among others, must guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations in respect of the branch in question, when they are resident abroad, direct payment of the benefit to which they are entitled under such branch.
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> In its report, the Government states that it will for the time being continue to progressively implement the provision of Article 5 by way of reciprocal arrangements. The Committee notes this information. However, the Committee points out that under this Article of the Convention the payment of long-term benefits (other than those of the type referred to in paragraph 6(a) of Article 2) to entitled beneficiaries resident abroad shall be guaranteed

as of right, even in the absence of a bilateral or multilateral agreement. Therefore, the Committee hopes that the Government will take the necessary steps in the near future to include in the legislation a provision ensuring direct payment of old-age, survivors' and employment injury benefits to all entitled beneficiaries at their place of residence.

The Committee draws the Government's attention to the availability of technical assistance from the Office.

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 6 of the Convention* (Payment of family allowances in respect of children resident abroad). The Committee notes from the information supplied by the Government in its report as also from section 51 of Supreme Decree No. 22578 of 13 August 1990, that the Bolivian social security scheme no longer provides for the payment of family allowances as contemplated under Article 6 of Convention No. 118 and Article 42 of Convention 102 of which it accepted Part VII (Family benefit) when it ratified the Convention. The Committee therefore expresses the hope that the Government will be able to re-examine the situation with a view to re-establishing a scheme of family benefits which complies with Part VII of Convention No. 102 and that on that occasion full account will be taken of Article 6 of Convention No. 118, which specifies that each Member which like Bolivia has accepted the obligations of the Convention in respect of family benefit shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.

The Committee draws the Government's attention to the availability of technical assistance of the Office.

Central African Republic (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous comments which it has been making for many years, the Committee notes from the Government's statement that the necessary amendments to bring the national legislation into conformity with the Convention are expected to be adopted soon. In these circumstances, the Committee cannot but express its hope once again that the amendments will be adopted in the very near future to give full effect to the Convention in the following respects:
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> *Article 4 (branch (g)) (employment injury benefit) of the Convention.* Section 27 of Act No. 65-66 of 24 June 1965 on industrial accident compensation should be supplemented by an express provision that in the case of a victim of an occupational injury who was a national of the State that has accepted the obligations of the Convention concerning employment injury, his dependants (survivors), even if they were resident abroad at the time of the victim's death and continue to reside abroad, shall receive survivors' benefits, if it is proved that they were actually dependent at the time of his death.
>
> *Article 5 (branch (e)) (old-age benefit).* The national legislation should be amended to provide for payment of old-age benefit in case of residence abroad, both to nationals of the Central African Republic and to nationals of any other member State that has accepted the obligations of the Convention concerning branch (e).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It draws the Government's attention to the availability of technical assistance of the Office.

France (ratification: 1974)

I. The Committee notes that the Government's report has not been received. Consequently, it would like to draw the Government's attention to the following points:

1. *Article 3, paragraph 1, of the Convention, branch (d)* (Invalidity benefit). (a) With regard to the supplementary allowance of the National Solidarity Fund (FNS) provided for in section L.815-2 of the Social Security Code, the Government had referred in its previous comments to ministerial consultations on the question of extending the provision of this allowance to all foreigners resident in France. In this respect, the Committee notes with interest the decision of 5 December 1994 of the Loire Social Security Tribunal, in the district of Saint- Etienne and Montbrison. In this decision, the Tribunal, referring to Article 3 of Convention No. 118, concluded that the supplemental benefit paid by the National Solidarity Fund (FNS), which supplemented old-age or invalidity pension, should be paid to a Mauritanian national entitled to an invalidity pension, since Mauritania has ratified Convention No. 118. Consequently, the Committee expresses the hope that the Government will be able to indicate in its next report the measures taken to grant in law and practice the FNS supplemental benefit to nationals of all member States which have accepted the obligations of the Convention (and not only to nationals of a country which has signed an international reciprocity agreement, as provided in section L.815-2 of the Social Security Code). It also asks the Government to furnish information on the impact of the decision by the Social Security Tribunal in Saint-Etienne.

Concerning the scope of the retaliation clause allowed by *Article 4, paragraph 1,* of the Convention, the Committee refers to its observation of 1993.

(b) With regard to the allowance for disabled adults, instituted by Act No. 75-534 of 30 June 1975, the Committee hopes that the Government's next report will contain detailed information on the measures taken to ensure the payment of this benefit to foreigners residing in France who are nationals of any State that has accepted the obligations of the Convention (subject to the Government's entitlement to avail itself of *Article 4, paragraph 2(b), of the Convention* under which it may make the grant of a benefit conditional upon a period of residence of up to five years).

2. *Article 4, paragraph 1 (branch (d)) (Invalidity benefit)* and *branch (f) (Survivors' benefit)*. In its previous comments, the Committee had noted that the legislation imposed the condition of residence in France for the provision of social security benefits (in this case invalidity and survivors' benefits) to foreigners insured under the general scheme (section L.311-7 of the Social Security Code), the agricultural scheme (section 1027 of the Rural Code) and the mines scheme (section 184 of Decree No. 46-2769 of 27 November 1946). In its report for the period 1 July 1991 to 30 June 1992, the Government indicated that concerning invalidity pensions, and invalid widowers' or widows' pensions, the condition of residence shall be fulfilled at the time of making a claim in the case of nationals of a country with which France does not have an agreement. It added that, with regard to survivors' pensions, the benefit of a reversionary pension may, in the case where the deceased insured was not a national of a country with which France has entered into an agreement, be obtained in the following situations: the deceased insured person has already obtained validation of the right to an old-age pension; the insured person who had not exercised the right to the pension had

resided in France at the moment of death. The Committee cannot but note that a condition of residence always exists for non-national beneficiaries, but only at the moment of exercising the right to benefit, that is to say, at the time when presenting the request to liquidate the invalidity or survivors' pension.

In these conditions, the Committee again hopes that, in all cases where the insured or the deceased was subject to the social security system in France at the moment of the contingency, the appropriate measures will be taken, concerning branches (d) and (f), to ensure the application of this provision of the Convention for payment of benefits, both in law and practice concerning equality of treatment, without condition of residence for nationals of all States bound by the Convention.

II. The Committee notes the observations of the French Democratic Labour Confederation (CFDT) on the modifications of the Social Security Code by Law No. 93-1027 of 24 August 1993 (concerning the supervision of immigration and the conditions for entry, reception of stay of foreigners in France) which introduced the requirement of regular residence to receive benefits and which has resulted in the denial of all right to social security benefit for persons in irregular situations. The CFDT adds in a new observation that this legislation has created situations which are unacceptable. Foreigners having the right to stay for numerous years have paid contributions to the social security fund. The loss of this right, in case of non-renewal of a residency permit, for example, would result in the loss of all benefits from these contributions since the person would cease to be a member of the fund.

The Committee also has noted the Government's statement in the previous report for Convention No. 97 that the provisions of the above-mentioned law do not violate the principle of equality of treatment for foreigners in conditions of regular residence or stay in French territory.

The Committee recalls that the principle of equality of treatment provided in Articles 3 and 4 of the Convention is intended to eliminate discrimination based on a person's nationality. Consequently, a requirement of lawful residence in the country or of lawful authorization to be in employment does not appear to be contrary to this principle; where such conditions are imposed the difference in treatment does not appear to be motivated by the alien status of the persons concerned but rather by their legal position under the regulations governing entry into and residence in the country, or access to employment.

The Committee wishes to stress that the loss of right of residence should not affect rights in the course of acquisition which the insured can claim for the periods of contribution in which he was in a regular situation. In this case, the rights in course of acquisition of the insured shall be maintained under the agreements provided for in Articles 7 and 8 of the Convention. Furthermore, in the case where the loss of right to remain occurs after the liquidation of rights, the provision of long-term benefits shall be guaranteed even after the insured person has left the national territory, in accordance with Article 5 of the Convention.

The Committee also refers to its observation for November-December 1995 under Convention No. 97.

Guinea (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 of the Convention*. In reply to the Committee's previous comments, the Government states that the draft text of the Social Security Code which was revised with the technical assistance of the ILO, will give full effect to the provisions of the Convention when

> it is adopted. The Committee takes due note of this information. It hopes that it will be possible to adopt in the near future the above text of the Social Security Code and that, when adopted, it will give full effect to Article 5 of the Convention, under which the provision of old-age benefits, survivors' benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreement with such country, both to nationals of Guinea as also to nationals of any other State which has accepted the obligations of the Convention in respect of the corresponding branch.
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> The Committee requests the Government to supply information on the progress made in this respect.
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> *Article 6.* The Committee hopes that the above draft text of the Social Security Code will also make it possible to give effect to Article 6, under which any State which has accepted the obligations of the Convention in respect of "family benefit" (branch (i)) must guarantee the grant of family allowances both to its own nationals and to the nationals of any other State which has accepted the obligations of the Convention for that branch, as well as to refugees and stateless persons, *in respect of children who reside on the territory of any such State*, under conditions and within limits to be agreed upon by the States concerned.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It draws the Government's attention to the availability of technical assistance from the Office.

Iraq (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 of the Convention* (Provision of benefits abroad). Referring to its previous comments concerning the application of this provision of the Convention, the Committee notes the information contained in the Government's report as well as the discussions which took place in the Conference Committee in 1994. The Committee recalls that for several years it has been asking the Government to indicate the measures taken or contemplated with a view to removing numerous restrictions concerning payment of benefits abroad for Iraqi nationals as well as foreign nationals, contained in section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and in Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq, which are contrary to this provision of the Convention. In this respect, the Committee notes from the Government's report, that the situation has remained unchanged. The Government's last report mainly reproduces the information contained in its previous report and in the statements made by the Government representative during the discussion of this case in the Conference Committee in 1993 and 1994, according to which, rules concerning the payment of benefits abroad are of a purely procedural nature and do not constitute restrictions on the payment of benefits conflicting with the Convention. The Committee refers in this respect to the request it is addressing directly to the Government in which it reviews in detail the effect on the application of the Convention of section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and Instruction No. 2 of 1978 respecting the payment of social security pensions to persons who leave Iraq.
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> The Committee nevertheless notes, from the information supplied in the report and in the Conference Committee in 1994 by the Government representative, that the Government confirms its intention to study the possibility of modifying the national legislation and to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of Iraq's economic situation. In view of the fact that no payment of benefits abroad has yet been made, the Committee cannot but once again urge the Government to adopt in the near future measures ensuring the provision of long-term benefits

in the case of residence abroad for Iraqi nationals and for nationals of other countries which have accepted the obligations of the Convention in respect of the branch in question, as well as for refugees and stateless persons, and to remove the restrictions in this respect in the light of the more detailed comments contained in the Committee's direct request.

Israel (ratification: 1965)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information, including statistics, supplied by the Government in its report. It would like to draw the Government's attention to the following points.
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> *Article 5, paragraph 1, of the Convention, branch (e) (old-age benefit), branch (f) (survivors' benefit) and branch (g) (employment injury benefit)* in relation with *Article 10 of the Convention*. In its previous comments, the Committee drew the Government's attention to the need to lift, as far as above-mentioned benefits are concerned, the restriction of section 146 of the National Insurance Act concerning the suspension of pensions in case of persons residing abroad for more than six months. It recalls that under the Convention, benefit should be paid abroad to Israeli nationals, the nationals of any other country which has accepted the obligations of the Convention in respect of the branches in question, as well as to refugees and stateless persons, without condition of residency.
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> In its reply, the Government explains that section 190 of the National Insurance Act entitles the competent Minister to make regulations for the implementation of agreements between Israel and foreign States and that a multilateral convention relating to national insurance to which Israel has acceded shall be regarded as an agreement within the meaning of said section 190. For employment injury benefits (branch (g)) in particular, the Government states that such benefits are paid to residents abroad in accordance with the provisions of the Convention. Therefore, it intends to enact regulations to codify the practice, and preliminary steps are already under way. The Committee notes this information with interest and hopes that the necessary steps will be taken in the near future to promulgate regulations to guarantee the provision of employment injury benefits in case of residence abroad as provided for by Articles 5 and 10 of the Convention.
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> Regarding old-age (branch (e)) and survivors' (branch (f)) benefits, the Government explains that negotiations are required with other countries which have ratified Convention No. 118 respecting such branches, and that bilateral agreements currently exist with nine countries. The Government adds, though, that all persons who meet the conditions of entitlement to an old-age or survivors' benefit will receive their benefit in the country of residence even if no bilateral agreement exists. The Committee notes this information. It recalls that the payment of these benefits must be effected as of right and without restriction including residency restrictions, even in the absence of a bilateral agreement. The Committee hopes therefore that the regulations which the Government intends to adopt will also cover the payment of old-age and survivors' benefits in case of residence abroad as provided for by these provisions of the Convention.
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> *Article 5(1) (death grants).* In response to the Committee's previous comments, the Government states that survivors receive a death grant even when the deceased was buried outside of Israel. The Committee notes this information. It would appreciate receiving a copy of the English translation of the legal provisions (such as statutes, regulations, and ministerial directives) guaranteeing this practice.
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> *Article 6.* In its previous comments the Committee recalled that under Article 6 of the Convention, the Government has the obligation to guarantee the grant of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of the Convention for branch (i) (family benefit) in respect of children who reside in the territory of any such member, irrespective of the length of the residence abroad. In its

reply, the Government states that the Insurance Institute may regard a child as being in Israel even if it has left Israel for a period exceeding six months. The Committee notes this information with interest. In view of the fact that, according to previous information, the Insurance Institute may exercise this power under limited circumstances only, pursuant to section 104(b) of the National Insurance Act, the Committee hopes that the Government will be able to take the necessary measures to codify this practice.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

I. *Article 3, paragraph 1, of the Convention* (also in conjunction with *Article 10*).

1. Referring to its previous comments which it has been raising for several years, and to the discussion at the Conference Committee in June 1992, the Committee notes the information supplied by the Government in its report. It draws the Government's attention to the following points:

(a) In its previous observations, the Committee noted that section 38(b) of the Social Security Act No. 13 of 1980 and regulations 28 to 33 of the Pension Regulations of 1981 specify that non-Libyan residents receive only a lump sum in the event of premature termination of work, whereas nationals are guaranteed, under section 38(a) of Act No. 13, maintenance of their wages or remuneration. It pointed out that this distinction is contrary to the provisions of the Convention. In its reply the Government explains that, unless the period of payment of contributions is counted as a contributory period under a social security agreement between the Government and the State of which the contributor is a national, the contributor is entitled only to a lump sum payment, in view of the fact that the foreign worker's residency permit is linked to his contract of employment and that he or she must leave the country upon termination of the contract. The Committee notes this information. It again emphasizes the importance of eliminating the distinction between nationals and non-Libyan workers in the case of *premature termination* of work. The Committee expresses its hope that the Government will take all necessary measures to do so in the near future.

(b) The Government states in its report that section 5(c) of the Social Security Act permits foreign employees working for public administrations to choose whether to contribute to the social security scheme because they enjoy many contractual benefits which are more advantageous than social security benefits. Furthermore, section 8(b) of the Social Security Act, concerning non-Libyan self-employed workers, establishes only voluntary contributions, unless an agreement has been concluded with the contributor's country of nationality, because most of the persons in this category are not residents in the Libyan Arab Jamahiriya and contribute to social security in their home countries.

The Committee notes this information. It again recalls that where the affiliation of nationals to the social security scheme is compulsory, as in the Libyan Arab Jamahiriya, affiliation of certain categories of foreign workers to the social security scheme on a voluntary basis only is contrary to the principle of equality of treatment as provided by the Convention (subject to any agreement drawn between the Members concerned under Article 9). The Committee hopes once again that the Government will take the necessary measures in the very near future to bring the legislation into conformity with the Convention on this point.

2. The Committee notes that the Government's report does not contain any information in reply to the previous observation concerning regulation 16, paragraphs 2 and 3, and regulation 95, paragraph 3, of the Pensions Regulations of 1981. These regulations provide that (without prejudice to special social security agreements) non-nationals who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance

scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, regulation 174, paragraph 2, of these Regulations seems to imply *a contrario* that the qualifying period is also required for pensions and allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee points out again that the above-mentioned provisions of the Pension Regulations of 1981 are incompatible with Article 3, paragraph 1, of the Convention. It hopes that the Government will not fail to indicate the measures taken or contemplated to ensure the application of this provision of the Convention.

II. The Committee notes that the Government's report does not contain any information in reply to its previous comments concerning *Article 5 of the Convention*. It recalls that regulation 161 of the 1981 Pension Regulations provides that pensions or other monetary benefits *may* be transferred to beneficiaries resident abroad without prejudice, where appropriate, in accordance with agreements to which the Libyan Arab Jamahiriya is a party. The Committee points out again that under this provision of the Convention each Member that has ratified it *must* guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. The Committee considers that the strict application of Article 5 of the Convention is all the more necessary in light of the recent mass expulsions of foreign workers from the national territory. It trusts that the Government will not fail to indicate in its next report the measures taken or envisaged to give effect in law and in practice to this basic provision of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It draws the Government's attention to the availability of technical assistance from the Office.

Mauritania (ratification: 1968)

Article 5 of the Convention (provision of benefits abroad). Further to its previous comments concerning the provision of benefits due to Mauritanian nationals who left Mauritania following the events of 1989, the Government indicates in its report that the National Social Security Fund insures the payment of benefit to Mauritanian nationals who left Mauritania in 1989, and it has already proceeded to regularize the claims of 10 pensioners and 13 other beneficiaries. The Government also states that Senegalese nationals entitled to benefits from the National Social Security Fund have been paid in accordance with Circular No. 120/DG of 28 November 1993 which authorizes the payment of arrears dating from April 1989.

The Committee notes this information with interest. It would like the Government to indicate whether there are other Mauritanian nationals entitled to benefit under the branches accepted by Mauritania (invalidity, old age, survivors' and work injury) who are still waiting to receive the benefit. It also requests further information on whether payments are made in periodic form.

Articles 7 and 8. The Committee notes that the Government's report does not provide any information on the provisions made concerning protection of the rights in the course of acquisition of Mauritanian nationals who had to leave the country after the events of 1989. It would appreciate receiving information on the measures taken in this respect (in particular as to old-age pensions).

The Committee also requests detailed information on the practical application of the Convention, in accordance with *point V of the report form*, including statistics of the amount of the benefits transferred to beneficiaries who reside outside the country.

[The Government is asked to report in detail in 1998.]

Suriname (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 (branch (g)) (employment injury benefit) of the Convention.* The Committee notes the information contained in the Government's report concerning the ILO mission on social security, the results of which will be discussed at a seminar planned for the end of this year. In previous comments, the Committee had drawn the Government's attention to the need to repeal section 6(8) of Decree No. 145 of 1947, as amended, which restricts payment of employment injury pensions to beneficiaries resident abroad. The Committee expresses its hope once again that the Government will take all necessary measures in the very near future to ensure in law and in practice the payment of employment injury benefits abroad, both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of branch (g), in conformity with Article 5.

Venezuela (ratification: 1982)

Article 5 of the Convention (in conjunction with Article 10) (concerning the following branches: (d) Invalidity benefits; (e) Old-age benefit; (f) Survivors' benefit; (g) Employment injury benefit). In its previous comments, the Committee had pointed out that the conversion of pensions into a lump sum provided for in Regulation 173 of the General Regulations of the Social Security Act, as amended in 1990, and in section 50 of the Social Security Act, is not in itself sufficient to give full effect to Article 5 of the Convention. In reply, the Government states that currently there are no plans to reform the Social Security Act or General Regulations. In these circumstances, the Committee cannot but express the hope once again that the Government will be able to take the necessary measures in the near future, by amending the legislation or other arrangements to ensure that, in the event of residence abroad, invalidity, old-age and survivors' benefits and employment injury benefit shall be paid both to Venezuelan nationals and to nationals of any other member States that have accepted the obligations of the Convention for the branch in question, as well as to refugees and stateless persons, in conformity with the provisions of Articles 5 and 10 of the Convention. It asks the Government to provide information on progress made in this respect.

Articles 7 and 8. The Committee notes that the Government has not entered into any new bilateral agreements during the reporting period. It would be grateful if the Government would continue to provide information in its future reports on any new agreements concluded with member States for which the present Convention is in force, to ensure the maintenance of acquired rights or rights in course of acquisition.

[The Government is asked to report in detail in 1998.]

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In addition, requests regarding certain points are being addressed directly to the following States: ***Bolivia, Cape Verde, Central African Republic, Ecuador, Egypt, Guinea, Iraq, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Norway, Rwanda, Tunisia, Uruguay, Zaire.***

Convention No. 120: Hygiene (Commerce and Offices), 1964

A request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980]

Ecuador (ratification: 1978)

For several years, the Committee has been raising a number of issues concerning the application of *Article 8* (list of occupational diseases), *Article 9, paragraphs 1 and 2* (prohibition on conditioning payment of benefit on payment of contribution), *Articles 13, 14 and 18* (in conjunction with Articles 19 and 20) (amount of periodical benefits paid in the event of temporary incapacity, permanent incapacity or death of breadwinner), and *Article 21* (review of cash benefit currently payable). In light of the fact that the Government's report does not indicate progress, the Committee is addressing a request directly to the Government concerning these issues.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that the Government's report has not been received for the third consecutive time. It must therefore repeat its previous observation which read as follows:

> *Article 21 of the Convention.* With reference to its previous comments, the Committee notes the Government's statement that, in accordance with sections 28 and 34 of the Social Security Act, No. 13 of 1980, the level of cash benefits currently payable for long-term benefits is reviewed following substantial changes in the cost of living or wage levels. It notes, however, that the Government's report does not contain the statistics requested in order to assess the manner in which this Article of the Convention is applied in practice. It therefore once again requests the Government to supply the statistics called for in the report form under this Article of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sweden (ratification: 1969)

In its previous observation concerning the follow up of the recommendations made by the committee set up to examine the representation made under article 24 of the ILO Constitution by the Swedish Trade Union Confederation (LO), the Swedish Confederation of Professional Employees (TCO) and the International Confederation of Free Trade Unions (ICFTU), approved by the Governing Body at its 258th Session (November 1993), the Committee asked the Government to supply a detailed report in 1996, containing information on the measures taken to ensure that cash benefits for incapacity for work which are due to a victim of an employment injury are paid from the first day of incapacity, as well as on the definition of employment injury and the burden of proof.

The Committee notes that the report requested this year was not supplied by the Government, but that in November 1995 the Government provided additional information. It further notes that this information does not contain a reply to the questions raised by the tripartite committee of the Governing Body in paragraph 47(b) of its report concerning changes in the work injury concept and in the burden of proof in employment injury cases in relation with *Article 8 of the Convention*. The Committee therefore once again hopes that the next report of the Government will contain full information on these subjects.

As regards the question of the waiting period, the Government states that, contrary to its previous intentions, it found, when preparing the Bill concerning Final Adjustment of the National Budget for the 1995/96 Fiscal Year adopted on 18 April 1995, that the strained financial situation did not permit the abolition of the waiting period of one day for health insurance benefits, nor consequently as regards employment injury insurance benefits. Furthermore, with a view to reducing the cost of these insurance schemes while at the same time providing a justifiable safeguard against loss of earnings, the Government proposed that a uniform benefit rate of 75 per cent of qualifying income be introduced, with effect from 1 January 1996, in the health and parental insurance schemes, as well as in unemployment insurance and in the sick pay system. According to the Government, these proposals have in principle been approved by the Riksdag. It adds that the Health Insurance and Work Injuries Advisory Committee appointed in 1993 was given new terms of reference to draft a universal scheme of illness insurance to be organized by the State; the Drafting Committee is to propose rules of compensation for this universal illness insurance and the Sick Pay Act based on the principle that the compensation rate for short- or medium-term absence is to be 75 per cent of qualifying income and that there is to be one waiting day.

The Committee notes this information. It hopes that, in elaborating the new universal scheme of illness insurance, it will be possible for the Government to reconsider the situation so as to ensure, in accordance with *Article 9, paragraph 3*, of the Convention, that the cash benefits for incapacity for work which are due to a victim of an employment injury are paid from the first day of incapacity. The Government is asked to indicate the progress made in this respect in its next report.

Venezuela (ratification: 1982)

1. *Article 4 of the Convention*. In its previous direct request, taking account of the comments made by the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), the Committee expressed the hope that it would be possible progressively to extend the social insurance scheme throughout the country. In its reply, as well as in the report under Convention No. 102, the Government indicates that the coverage of the general social security scheme has been extended to the public sector employees, as regards medical care and cash benefit for temporary incapacity, by Decree No. 3325 of 13 January 1994, and that basic principles permitting the affiliation of artisans and artists to this scheme were laid down by Decree No. 2558 of 1992. It adds that the studies have been carried out with a view to extending its coverage further to some other categories of workers and geographical regions of the country. Finally, the Government refers to the provisions concerning employment injuries contained in the new Organic Labour Law which has entered into force in 1991, which ensure inter alia the payment of lump-sum compensation for victims of employment injuries in case of total permanent incapacity (section 571) and to their dependants in case of death (section 567), as well as their right to the necessary medical, surgical and pharmaceutical care, and funeral expenses (section 577).

The Committee notes this information with interest. It also notes the statistics of the Venezuelan Social Security Institute (IVSS) supplied by the Government, as well as those published in the Venezuelan Yearbook of Statistics (1994, in particular table 471-06). As regards the above-mentioned provisions concerning compensation of employment injuries of the Organic Labour Law, the Committee wishes however to point out that the protection they offer cannot be considered sufficient to fulfil the requirements of the Convention as they are limited to establishing employers' obligations to pay the injured worker a lump-sum compensation as well as to provide medical benefit up to an amount equivalent to five minimum wages, whereas under *Article 9, paragraph 3*, and *Articles 13, 14 and 18 of the Convention*, cash and medical benefits should be granted throughout the contingency and cash benefit shall be a periodical payment.

The Committee also observes that in 1995, according to the available statistics, the general insurance scheme still covered only about 55 per cent of the total number of employees in the country. The Committee hopes therefore that the Government's next report will contain information on any progress made in order to extend the social insurance scheme throughout the country, so as to gradually cover all employees, including apprentices, in the public and private sectors, including cooperatives, subject to any exceptions that might be made under *Article 4, paragraph 2*, of the Convention. It would also appreciate receiving detailed and up-to-date statistics, as required under this Article by the report form on the Convention adopted by the Governing Body, specifying in particular the number of employees protected by the general insurance scheme and the total number of employees (and not *población ocupada*) both in the public and the private sectors.

2. *Article 7.* In reply to the Committee's previous comments, the Government indicates that, by virtue of section 100 of the Social Insurance Act, the definition of industrial accidents used for the purposes of compensation under the social security system is the one contained in section 561 of the Organic Labour Law. This definition covers industrial accidents which occurred not only in the course of work, but also "in relation to work", and thus, according to the Government, includes commuting accidents as well. The Committee notes this information with interest. It hopes that the Government will be able to specify, in regulations or administrative circulars, the conditions under which commuting accidents are to be considered as industrial accidents for the purpose of compensation under the social insurance legislation.

3. *Article 8.* The Government indicates that, by virtue of section 100 of the Social Insurance Act, the definition of occupational diseases used for the purposes of compensation under the social insurance system is the one contained in section 562 of the Organic Labour Law. The Committee notes that, according to sections 562 and 583, in regulating the Organic Labour Law, the Government may enlarge the definition of occupational diseases, as well as consider, as occupational, diseases caused by substances to be determined in regulations. The Government's report also contains a copy of the list of occupational diseases and toxic substances which corresponds to the one supplied in its first report in 1986. In the light of these provisions, the Committee would like the Government to indicate (a) whether diseases other than those mentioned in regulations under section 583, could be considered as occupational diseases and under what conditions, and (b) whether all the diseases enumerated in Schedule 1 to the Convention, although not included in the national list, are considered as occupational for the purposes of compensation under the social insurance system. Please supply also a copy of any updated list of occupational diseases, if adopted.

4. *Article 10, paragraph 1.* For a number of years the Committee has been asking the Government to indicate what specific provisions in laws, regulations or administrative rules guarantee the provision of the types of medical care required by Article 10, paragraph 1, of the Convention and, in particular, to supply the text of the internal rules to be issued by the Board of Governors of the IVSS in pursuance of section 119 of the General Regulations of the Social Insurance Act, that the IVSS will

provide medical benefits in the form and conditions set forth by the Board. In reply, the Government refers to the Regulations concerning integral medical care adopted by the Board of IVSS, sent to the ILO together with the Government's report on Convention No. 102. The Committee notes that the report on Convention No. 102 contained only regulations of hospitals of the IVSS which deal with the internal organization of the medical services in hospitals, but do not specify the types of medical care ensured to the protected persons. The Committee recalls that no such provisions exist either in the Social Insurance Act, its General Regulations or the Act of 2 July 1986 to which the Government referred in its previous report. It observes that, notwithstanding the efforts made by the Government to improve the provision and the quality of medical care in practice described in its report, in the absence of such express provisions in the national legislation, victims of industrial accidents have no legal guarantee of being provided free of charge, under all circumstances, the full range of medical care specified by the Convention. The existence of such legal guarantees to insured persons may become particularly important in view of the processes of restructuring of the IVSS, decentralization of its medical care services and potential privatization of some of them, mentioned by the Government in its reports on Convention No. 102. In this situation, the Committee would urge the Government to take the necessary measures with a view to expressly specifying in the legislation the types of medical care provided by the IVSS to the insured persons, which should include at least those mentioned in Article 10, paragraph 1, of the Convention.

5. *Article 13; Article 14, paragraph 2; Article 18, paragraph 1 (in conjunction with Article 19).* The Committee has been requesting the Government, since its first report, to supply the statistical information, including the wage of the skilled manual male employee, requested under Article 19 in the report form on the Convention adopted by the Governing Body; such statistics being necessary for the Committee to ascertain whether the amount of periodical benefits prescribed by national law attains, in all cases, the minimum level established by the Convention.

In its reply, with respect to the calculation of periodical benefits paid in case of temporary incapacity, permanent disability and death of the breadwinner due to an employment injury, the Government refers to the definition of the term "skilled employee" (*obrero calificado*) given in section 44 of the Organic Labour Law and provides data on the national minimum wage for urban and rural workers. The Committee wishes to point out in this respect that, for the purposes of the calculation of benefits guaranteed by the Convention, a skilled manual male employee shall be selected in accordance with *paragraphs 6 and 7 of Article 19* and his wage shall be determined in accordance with its *paragraph 9*. It therefore once again hopes that the Government will be able to compile and to supply in its next report all the statistical information in the form requested under Article 19 of the Convention.

6. *Article 18 (in conjunction with Article 1(e)(i)).* The Committee notes the declaration of the Government to the effect that it has taken due note of its previous comments concerning the need to amend section 33 of the Social Insurance Act in order to raise to 15 the age up to which children shall be entitled to a survivors' pension. It hopes that the next report of the Government will indicate the progress achieved in this respect.

7. *Article 21.* In reply to the Committee's previous comments, the Government states that in 1993 invalidity, partial incapacity and survivors' pensions were increased by 40 per cent. The Committee notes this information with interest. In order to enable it to assess the real impact of the increases in the level of pensions taking into account fluctuations in the general level of incomes or the cost of living index, it hopes that the

Government will be able to supply, as it has already been requested to do since its first report, the data required under the report form for this Article of the Convention.

8. *Article 22, paragraph 1(d) and (e), and paragraph 2.* In reply to the Committee's previous comments concerning section 160 of the General Regulations of the Social Insurance Act, the Government states that while the provisions of this section have never been used in practice to suspend the benefits, it has taken due note of the need to eliminate this section from the legislation. Consequently, to avoid any ambiguity, the Committee hopes that the Government will not fail to take the necessary measures when this legislation is next revised. It hopes that measures will also be taken to ensure that in the appropriate cases part of the suspended benefit shall be paid to the dependants of the person concerned.

[The Government is asked to report in detail in 1998.]

Zaire (ratification: 1967)

In reply to the Committee's previous comments, the Government states that it is not currently in a position to provide information that would enable the Committee to assess the application of *Articles 13, 14 and 18 (in relation with Articles 19 and 20), as well as Articles 21, 23 and 24, paragraph 2, of the Convention*, in view of the difficult political and economic situation experienced by the country. With regard to the draft text to add to the schedule of occupational diseases, in accordance with *Article 8* of the Convention, diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series and diseases caused by benzene or its toxic homologues, the Government undertakes to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council.

The Committee notes this information. It hopes that, despite the current difficulties, the extended schedule of occupational diseases will be adopted in the very near future in order to give full effect to Article 8 of the Convention and that the Government will make every effort to provide information concerning the application of the other provisions of the Convention referred to above, as requested in its 1995 observation. The Committee would also be grateful if the Government would indicate any progress achieved in the formulation and adoption of the new Social Security Code.

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In addition, requests regarding certain points are being addressed directly to the following States: *Ecuador, Libyan Arab Jamahiriya, Netherlands.*

Convention No. 122: Employment Policy, 1964

Algeria (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994 and the attached legislation. The Government has also provided the results of the survey on labour in 1992 which show unemployment (as compared with 1991) increased by 17.5 per cent. Despite an apparently low labour force participation rate for the population of working age, due essentially to the very low participation rate of women (8.75 per cent), the unemployment rate was estimated at around 22 per cent. Since job creation did not keep pace with the rapid population growth, unemployment continued to affect mainly young persons seeking a first

job. According to the latest data available at the ILO, unemployment has continued to rise and affects about one quarter of the active population.

2. In its report, the Government provides general information on the approach used in the employment policy it is conducting in the difficult context of transition towards a market economy: it expresses its conviction that industrial restructuring and privatization will allow present employment to be maintained and estimates that the "micro" and small business sector, along with the development of major works, will make a contribution to the creation of new jobs. The Committee, which lacks the information to assess the manner in which the objectives set out in *Article 1 of the Convention* are promoted in practice, would be grateful if the Government would supply in its next report more specific information on the objectives and effects, in terms of growth and employment, of the mobilization and structural reform programmes applied with the support of the IMF and the World Bank. It hopes that the report will include fuller information on the measures taken or envisaged in investment policy, monetary and budgetary policy, industrial and regional development policies and policies on prices, income and salaries, specifying how they contribute to promoting productive and freely chosen employment.

3. The Committee notes that the machinery for entry of young people remains a major feature of the labour market policy with, in particular, the conclusion of pre-recruitment and integration-training contracts along with job creation measures. Noting the Government's indications that weakness and failure have been noted in regard particularly to profitability of projects and the effectiveness of the cooperative system to encourage lasting employment for young people, the Committee would be grateful if the Government would supply in its next report any available assessment of results obtained by these various measures. Noting also the stress placed by the Government on productive employment as a means of restoring the concept of work as a value, it requests the Government to specify the measures taken in order for the school and training system to make a greater contribution to encouraging the integration of young people in the productive economy.

4. The Committee notes the importance attached by the Government to the establishment of an effective public employment service as a prerequisite to implementing action on employment policies. Referring to its previous comments, it refers to the observation it makes elsewhere in this report on the application of Convention No. 88 in which it requests the Government to describe the measures taken to give effect to the provision stipulating that the employment service must cooperate in the administration of unemployment insurance and assistance and other measures for the relief of the unemployed. More generally, the Committee would be grateful if the Government would supply more complete information on the labour market policy, with particular reference to application of the new Labour Code. With regard to measures designed to balance labour supply and demand, the Committee would be grateful if the Government would provide information on the policy pursued in regard to migration of workers. If it is deemed useful, on this matter the Government may consult Part X of Recommendation No. 169 entitled "International migration and employment".

5. The Committee notes the provisions of the Presidential Decree of 5 October 1993 establishing an economic and social council for the purpose of ensuring dialogue between the social partners and comprising, inter alia, a committee on economic and social development prospects and a population and social needs committee. It requests the Government to indicate whether consultation on the subject of employment policies took place in this council and to supply examples of all relevant recommendations, appeals, reports or studies. The Committee which cannot overstress the need to ensure the widest social dialogue on unemployment problems in the context of the ongoing structural reforms hopes to see in the Government's next report new information showing how consultation with all the persons affected on employment policies is ensured in practice "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies" in accordance with *Article 3 of the Convention*.

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994. In its previous comments, the Committee included a request for information on the situation, level and trends in employment, unemployment and underemployment, particularly with regard to the most vulnerable categories of the population such as women, young people seeking their first job, workers who have lost their jobs as a result of economic adjustment, indigenous peoples, etc. The Government states that it is not possible to satisfy such a request for the moment. Budgetary restrictions prevent the carrying out of regular censuses and/or surveys which would help to provide an overview of the labour market periodically and clearly. The Government states that it is the National Statistics Institute which prepares an annual integrated survey of households. In these circumstances, the Committee refers to the analysis and the statistical information transmitted by the ILO multidisciplinary technical team (MDT) in Lima. According to the data provided by the MDT, non-agricultural employment has increased rapidly during 1990-93, faster than demand, which resulted in the reduction of open urban unemployment (which fell by 7.3 per cent in 1990-91 to 5.8 per cent and 5.4 per cent in 1992 and 1993 respectively). Nevertheless, between 1990 and 1993, informal urban employment still continued to rise. Over 60 per cent of the urban economically active population is working in low productivity jobs or is unemployed. The Committee recalls that many aspects of an active employment policy lie beyond the competence of the minister responsible for labour so that preparation of a full report on this Convention requires consultations with other ministries or government agencies concerned such as those responsible for planning, the economy and statistics. In this respect, it would be appreciated if the Government's report could contain indications on the procedures adopted in order to take into account the objectives of an active employment policy in the light of the other economic and social objectives. The Committee trusts that the Government will do its utmost to ensure that, in its next report on the application of the Convention, statistical information can be supplied on the size and distribution of the labour force and the nature and extension of unemployment as an essential stage for the formulation and execution of an active employment policy, in the meaning of *Articles 1 and 2 of the Convention*.
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> 2. The Government's report includes some indications on assistance given to persons affected by administrative restructuring who can receive allowances and grants from the Social Relief Fund. The Committee hopes that in its next report the Government will be able to supply detailed indications on the results achieved by the measures designed to satisfy the needs of the least privileged categories of persons who have difficulty in retaining their employment or in obtaining lasting employment such as workers affected by administrative restructuring or industrial rationalization, women, young people, the disabled, or the long-term unemployed. Please indicate the results obtained by the measures envisaged in the context of decentralization and popular participation for the execution of regional and local programmes for strengthening small business and other employment programmes.
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> 3. The Committee recalls that in its previous comments it was able to welcome the information supplied by the Government on the activities of the National Institute of Vocational Education and Training (INFOCAL). It requests the Government to refer again in its next report to matters pertaining to the coordination of education and vocational training policies with employment policy which is essential so that all workers have the fullest possible opportunity to qualify for a job for which they are well suited and to use in this job their skills and endowments.
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> 4. Finally, the Committee notes that the Government's report does not contain the information requested on several occasions, by the Conference Committee on the Application of Standards among others, on the consultations which should be held on employment policy. These consultations should discuss the measures which have to be adopted in relation to

employment policy with the aim of taking fully into account the experience and views of the persons affected and, furthermore, obtaining their full cooperation in the task of formulating the policy concerned and enlisting the necessary support for its execution. The consultations with representatives of the persons affected might include representatives of employers and workers and also representatives of other sectors of the population such as those working in the rural sector and the informal sector. The Committee trusts that, bearing in mind the vital importance which it attributed in previous reports to agreement between the main social and economic agents, the Government will not fail to provide in its next report the details required by the report form under *Article 3 of the Convention*.

Costa Rica (ratification: 1966)

The Committee notes the Government's report for 1996. It also notes that at its 266th Session (June 1996), the Governing Body approved the report of the Committee that it had set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution alleging non-observance of the Convention by Costa Rica. The Governing Body invited the Government to provide, in its next report under article 22 of the Constitution, comprehensive information on the application of the Convention, and in particular:

(i) the effect on employment, either recorded or anticipated, of the macroeconomic policies implemented as part of the structural adjustment programme to reduce public spending;

(ii) the number of workers affected by the programme to reduce public employment, the measures taken to facilitate their reintegration into the private sector and the results achieved; and

(iii) the manner in which the representatives of the persons affected by the measures to be taken, and in particular employers' and workers' representatives, are consulted about employment policies.

The Committee requests the Government to provide the information requested in order to enable it to resume its examination of the application of the Convention at its next session.

[The Government is asked to report in detail in 1997.]

Denmark (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994. It notes that most of the period was characterized by a low rate of economic growth, the continued decline in total employment and a rise in the unemployment rate, which flattened out at over 12 per cent in 1993 and 1994, in comparison with 11.2 per cent in 1992. According to OECD estimates, the livelier growth of the economy as of 1994 should make it possible to reduce the unemployment rate to 10.6 per cent in 1995.
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> 2. The Government emphasizes that the reduction in the level of unemployment and the improvement of the employment situation have been among its very highest priorities since it entered office in January 1993. In this respect, it refers to the implementation of an expansionist fiscal policy in order to stimulate economic activity and promote employment, without jeopardizing sound economic development. In this context, it refers to the reform of income tax, public investments in infrastructure, initiatives to support entrepreneurs and strengthen research and development activities, and the creation of additional places in education and training, particularly in the field of further training for adults. The Committee

would be grateful if the Government would continue supplying information on the manner in which the principal strategies of economic policy contribute to the pursual of employment objectives.

3. The Government also considers that the active labour market policy measures adopted have not been sufficient, for which reason it has commenced a reform with a view to harmonizing and decentralizing such measures as of January 1994, particularly through the adoption of the consolidation Act respecting the active labour market policy, which emphasizes the early identification of persons who are particularly threatened by long-term unemployment and a more effective individualized follow-up for jobseekers. The Act on leave is intended to promote temporary withdrawals from the labour market through training leave, parental leave and sabbatical leave with a view to a better distribution of employment, while at the same time contributing to the improvement of the skills and living standards of workers. The Committee requests the Government to indicate the extent to which the implementation of these provisions has resulted in the creation of new jobs.

4. The Committee notes the changes in the procedures for the consultation of the persons affected by employment policies. It notes the establishment under the Ministry of Labour of a Labour Market Council, the advisory competence of which is extended to the formulation and follow-up of all labour market policy measures. The Committee also notes the establishment of the Training Council, with responsibility for submitting proposals to the Minister of Labour concerning law and policy in this field. The Committee requests the Government to provide information in its next report on the opinions issued by these advisory bodies, and to transmit any relevant examples of reports or recommendations that they have adopted.

Djibouti (ratification: 1978)

The Committee notes that the Government's report has not been received. It is once again repeating in a direct request the comments made previously. It hopes the Government will supply a report containing all available information on the application of the Convention. The Government may wish to seek the technical assistance of the ILO multidisciplinary team in Addis Ababa in regard to the issues raised by the Convention.

Ecuador (ratification: 1972)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. The Committee notes the Government's report for the period ending June 1994. With reference to its request made in the observation of 1994 on the procedures which have been adopted to guarantee that the measures which are taken to promote economic development and other economic and social objectives contribute to the attainment of the employment objectives set out in development programmes, the Government states its conviction that the success obtained in reducing inflation (from 60 per cent in 1992 it has dropped to 26 per cent in 1994) is a major achievement to improve the purchasing power of the population. The Government also states that the recovery in monetary reserves, the reduction in the budget deficit (which dropped to 0.4 per cent of the GDP in 1993) and, especially, the agreement with external creditors for renegotiation of the external debt, are contributing to the increase of productive foreign investment, which will reactivate the employment market in the country. The Committee notes the results achieved in re-establishing the growth of the GDP and reducing inflation but notes that unemployment is around 13 per cent while the underemployment level is about 50 per cent. On this matter, the Committee trusts that in its next report the Government will supply information on the results of the measures planned to solve the problem of unemployment and underemployment. In this respect, the Government should supplement its next report with replies to the questions concerning overall and sectoral

development policies, labour market, educational and training policies set out in the report form approved by the Governing Body.

2. With reference to the comments it has been making for several years, the Committee again notes that the Government recognizes the crucial importance of the views of the social partners on employment policy. The Government refers to the Action Plan 1993-96 in which it expresses its intention to discuss these matters with the sectors concerned, suggesting the implementation, for example, of activities strengthening wide participation and forming a labour consultation plan. This plan would be based on a tripartite agreement between employers, workers and the public sector, would have the economic support of UNDP and the technical support of the ILO. The Committee notes that this project was to begin in 1995 with the aim of negotiating tripartite agreements on policies for employment, wages and productivity to be carried out in the country. The Government adds that it is seeking to institutionalize machinery for dialogue and participation. The Committee trusts that it will be possible to carry out these initiatives suggested by the Government, which appear to comply with the purpose of the consultations required under *Article 3 of the Convention*. The Committee trusts that the Government will be able to supply indications on progress in this matter.

3. The Committee notes the observations of October 1994 sent in by the Ecuadorian Central of Class Organizations (CEDOC) regarding application of the Convention. CEDOC considers that the Government's policy of encouraging state workers to resign and abolishing posts within the framework of a state reduction plan is contrary to application of the Convention. Between 1993 and 1994 20,000 state workers were made redundant. Furthermore, CEDOC states that the Government does not consult workers' organizations — at least CEDOC — on the measures to be adopted on employment policy. The Government for its part indicates in its report (which states a copy has been sent to CEDOC) that programmes for retraining public employees who have left their jobs are being carried out while strong support is being given to micro-enterprise management as a real employment alternative for this group of workers. The Committee recalls that in its direct request of 1994 it included a question regarding the impact on the social costs of structural adjustment of the compensation plan formulated following the programme to reduce public expenditure and the privatization policy. In this context, the Committee notes Decree No. 2243 of 8 November 1994 which establishes a national training programme for integration into productive activities of public employees who participated in voluntary resignation programmes. It also notes the support provided to micro-enterprises through 225 million dollars received from the World Bank, Inter-American Development Bank and the Andean Development Corporation which allow favourable credits to be granted in the sector. The Committee requests the Government in its next report to specify the results obtained from these measures which seem designed to align labour supply and demand as a result of the structural changes made in particular areas such as the public sector. The Committee trusts that the representatives of the persons affected by the employment reduction measures will be consulted, within the meaning of the Convention, and will be involved in the consultation referred to by the Government in its report.

4. In a direct request, the Committee requests the Government to include in its next report information on some aspects of the application of the Convention such as the effects of liberalization of trade on employment, the incomes policy, the action of the Social Front in formulation of the employment policy, compensatory measures adopted in the framework of employment programmes, technical cooperation received from the Office, job creation through part-time contracts and free zones.

Finland (ratification: 1968)

1. The Committee notes the Government's detailed report and the observations made by the Confederation of Finnish Industry and Employers (TT), the Employers'

Confederation of Service Industries (LTK), the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions of Academic Professionals in Finland (AKAVA) and the Finnish Confederation of Salaried Employees (STTK).

2. The Committee notes that the recovery in the growth rate resulted in an unemployment rate of 17.2 per cent in 1995, but that the fall in unemployment has slowed down since then. The STTK emphasizes that the economic recovery has only had a slight impact on the labour market, which remains affected by mass unemployment. The AKAVA draws attention to the rise in unemployment among graduates and the more general trend towards atypical forms of employment, including fixed-term employment in the public service. One serious aspect of the employment situation noted by the Committee is the growth in the proportion of long-term unemployment, which now accounts for over 30 per cent of all unemployment.

3. When it adopted its employment programme in 1995, the Government set the objective of reducing unemployment by half by 1999. In its report, it describes the principal components of its strategy to promote economic growth and employment, which consist of maintaining a low level of inflation by containing labour costs, reducing the public debt, lowering interest rates to encourage investment and consumption, decreasing taxes on labour, promoting entrepreneurship and the creation of small and medium-sized enterprises, strengthening education and training and seeking greater flexibility in the labour market, particularly as regards hours of work. The Committee notes that the organizations of employers and workers express contrasting opinions with regard to this strategy. In their common observations, the TT and the LTK consider that the Government is on the right track, but that the growth in production will not be sufficient to create new jobs rapidly. They consider that the programme does not place sufficient emphasis on flexibility and the reduction of the indirect costs of labour, which would require much more radical measures. However, the SAK is of the opinion that the Government's excessively restrictive monetary policy will prevent it achieving the objective of reducing unemployment.

4. The Government states that the projections for the convergence programme designed to fulfil the conditions required for European monetary union foresee an unemployment rate of 12.5 per cent in 1999, and that only a higher growth rate would make it possible to achieve the objective of the employment programme. The Committee notes that the Government's medium-term employment objectives are far from that of full employment within the meaning of *Article 1 of the Convention*, and that they are also combined with other objectives to which it may appear that higher priority is given. The Committee requests the Government to re-examine the measures to be adopted with a view to promoting, as a major goal, full, productive and freely chosen employment within the framework of a coordinated economic and social policy, in accordance with *Article 2*, and to transmit its own observations.

5. The Committee notes the information on the various active labour market policy measures which, under the terms of the Government's programme, should cover 5 per cent of the active population. For the TT and LTK, this objective is an error and it would be better to facilitate finding jobs on the open labour market. In contrast, the SAK considers that the number of beneficiaries should be further increased. In the light of the above terms of the Convention and in consultation with the representatives of the persons affected, the Committee requests the Government to examine measures designed not only to reduce the rate of registered unemployment, but also to generate new jobs, also taking into account the provisions of Convention No. 168 and the comments made by the Committee on the application of that Convention.

6. *Article 3.* The Committee notes that, according to the TT and LTK, the competent tripartite bodies in the field of employment and labour market policy do not operate in a fully satisfactory manner and that they are only informed so that they can discuss solutions already adopted. The Committee recalls that, under the terms of the Convention, representatives of the persons affected, and in particular representatives of employers and workers, have to be consulted concerning employment policies with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies. It hopes that the Government will not fail to examine with the various representatives concerned more satisfactory arrangements for achieving this objective and that it will provide all the necessary information.

France (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's detailed report for the period ending June 1994, which demonstrates the consideration given to the comments on the application of the Convention. It regrets, however, that the data supplied by the Government, like those from the OECD, confirm the continuing deterioration of the employment situation since the beginning of the decade. The slow growth in economic activity and its recession in 1993 resulted in a decrease in total employment of 0.8 per cent in 1992 and 1.2 per cent in 1993. The unemployment rate, which was 9.4 per cent in 1991, increased rapidly to 10.4 per cent in 1992, 11.7 per cent in 1993 and 12.3 per cent in 1994. The Committee notes that, according to the OECD, the upsurge in activity and in employment should allow unemployment to stabilize at a rate estimated at 12 per cent in 1995. Swelled by dismissals and a drop in the number of unemployed finding work, the increase in rate of unemployment has been more pronounced for the age groups having the highest rate of activity. Young people under 25 years of age, however, experienced unemployment levels of up to 27.5 per cent in 1994, despite the considerable reduction of activity in this age group. The unemployment situation is still very worrying, because of both the unprecedented level of unemployment and the percentage of long-term unemployment.
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> 2. Referring to its previous observations, the Committee notes the indications supplied by the Government on the general economic policy measures taken with a view to promoting employment. The Government stresses that priority must be given to reducing interest rates which can only be obtained by reducing public deficits. It considers that the beneficial effects of such a policy for activity and employment will be felt only progressively, which justifies the adoption in the interval of selective fiscal measures to encourage private consumption of durables and investment in home ownership or assisting enterprises to overcome their present difficulties. In addition, as a remedy for structural financing problems of firms, the Government has adopted measures designed to promote a better allocation of savings, to cut down the tax burdens on restructuring operations in enterprises and to conclude privatization of enterprises in the competitive sector. The Committee invites the Government to continue to supply information on the various aspects of the macroeconomic policies pursued with a view to promoting growth in activity and employment. It requests it in particular to specify in what manner the main objectives in terms of interest rates, exchange rates or budgetary deficit are determined and reviewed regularly on the basis of their actual or expected impact on employment.
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> 3. The Government has, moreover, sent detailed information on the labour market policy measures implemented during the period. The Committee, which notes the importance of hirings under the solidarity employment contract system, invites the Government to supply information on how this arrangement contributes to lasting integration into employment of those concerned. It also requests the Government to supply any assessment available of the

effectiveness of the various measures for integrating young people in alternating training. The Committee notes the provisions of the five-year law of 20 December 1993 concerning work, employment and vocational training. It notes that this law tends to promote the creation or maintenance of jobs by lowering the cost of labour through measures to exempt from social charges, to encourage better distribution of work by the negotiated arrangement of the organization and duration of work and to better coordinate the various measures for apprenticeship, training and occupational integration. The Committee would be grateful if the Government would supply in its next report information on the results which had been obtained in each of these fields through these arrangements, which do not for the moment, as the 1995 OECD economic survey seems to suggest, according to evaluation available, to have had clear and appreciable effects in terms of combating unemployment.

4. The Committee notes the indications on the consultation of representatives of employers' and workers' organizations in the higher employment committee established under the Ministry of Labour. It recalls on this score that the consultations required by *Article 3 of the Convention* should be extended to all aspects of economic policies having an influence on employment. The Committee would be grateful if the Government would indicate whether such consultations allowing the representatives of the persons affected to collaborate in formulating these policies are held, for example, in the Economic and Social Council.

Germany (ratification: 1969)

1. The Committee notes the Government's report for the period ending June 1996 which, in reply to its previous observation, contains a detailed description of developments in the employment situation and the policies implemented. It notes that the period was characterized by a slow-down in the rate of economic growth, a levelling-off of job creation in the Eastern part of the country and a rise in the unemployment rate, which was 10.4 per cent in April 1996 for the country as a whole and 16 per cent in East Germany. The Government describes in its report the action programme for investment and employment that it adopted in January 1996, which provides in particular for: measures to encourage the creation of small and medium-sized enterprises, a reduction in the costs associated with labour and the lifting of obstacles to competition; measures, particularly of a fiscal nature, to support the economic restructuring in East Germany, which remains the priority objective of its economic policy. The appreciation of the currency is also said to have contributed to the deterioration in the employment situation. In view of the developments in the situation referred to above, the Committee requests the Government to describe as much as possible the impact of all the relevant overall policies on the promotion of the objectives of the Convention.

2. The Committee notes that the Government has continued to make use on a broad scale of active labour market policy measures, particularly in the East of the country where, according to the Government, retraining and employment promotion measures have contributed to a reduction in the proportion of long-term unemployment and the maintenance of a low level of unemployment among young persons. The Committee requests the Government to continue supplying evaluations of the results obtained by the various measures taken under the Employment Promotion Act.

3. The Committee notes the information that the possibility of transforming fixed-term contracts into contracts without limit of time has resulted in stable employment in half of the cases arising. The Government refers to a Bill on the promotion of industrial employment to amend the provisions applicable to the conclusion and renewal of fixed-term contracts. Given the objectives of the Convention, the Committee requests the Government to indicate the effect that the implementation of these new measures has had

or is expected to have on the level of employment and the lasting integration of the persons concerned into employment.

4. *Article 3*. The Committee notes the general information concerning consultation of the social partners. With reference to its previous comments, it would be grateful if the Government would provide more detailed information on the consultations that have been held concerning employment policies, the subjects covered, the opinions expressed and the manner in which they have been taken into account.

Honduras (ratification: 1980)

1. The Committee notes the Government's report for the period ending June 1996 and the information in reply to its previous comments. The Government describes developments in the economy and employment since the beginning of the implementation of the structural adjustment programme in 1990 and emphasizes that foreign debt, the budgetary deficit and the rapid growth of the economically active population are all obstacles to the achievement of the objective of full employment envisaged in *Article 1 of the Convention*. According to government estimates, the open unemployment rate was around 4.2 per cent in 1995 (6.6 per cent in urban areas), while 25 per cent of the economically active population (over 33 per cent in the rural sector) were affected by underemployment.

2. The Committee notes the information concerning the action programmes undertaken by the Honduran Social Investment Fund (FHIS) designed to improve the living conditions of underprivileged social groups by increasing their levels of employment and income. It notes that the support programme for the informal sector benefits from ILO technical cooperation. The Government also reports measures for the promotion of rural employment and new provisions adopted for the employment of workers with disabilities. The Committee notes that measures financed by the FHIS have led to the creation of 32,044 jobs lasting on average three or four months between 1990 and 1994, and it would be grateful if the Government would provide as much detailed information as possible on the contribution made by the various measures that it describes to the effective and lasting integration of the persons concerned into employment. The Committee requests the Government to continue describing the measures taken by the National Vocational Training Institute (INFOP) with a view to improving the coordination of education and training policies with prospective employment opportunities.

3. The Government states that, despite the policies pursued to address the employment problems, the objective of full employment remains unattainable due to the economic and structural problems experienced by the country. The Committee notes the emphasis placed by the Government on the reduction of public expenditure and the promotion of foreign investment through means such as the establishment of export processing zones. It would be grateful if the Government would: (i) provide detailed information on the incidence on employment of the measures adopted under Decree No. 135-94 to rationalize the administration and the public sector, with an indication of the accompanying measures that are envisaged to guarantee employment for the workers affected; (ii) provide information on the contribution of export processing zones to the creation of productive employment; and (iii) indicate the manner in which the employment policy takes into account "the mutual relationships between employment objectives and other economic and social objectives" (*Article 1, paragraph 3*, of the Convention) and is pursued "within the framework of a coordinated economic and social policy" (*Article 2*). The Government could, for example, envisage the adoption of

mechanisms to ensure that the objectives and obligations of the Convention are duly taken into account in the design and implementation of the corresponding policies and programmes, as well as in any negotiations with the international financial institutions.

4. The Committee notes the indication that the adoption of legislation to promote employment gives rise to consultation with the organizations of employers and workers concerned. It recalls that, in accordance with *Article 3* of the Convention, representatives of all the persons affected by the measures to be taken must be consulted concerning employment policies, both at the time of their formulation and for their implementation. With reference to its previous comments, it trusts that the Government will indicate in its next report the manner in which consultation (with the representatives of the persons affected) is assured in practice and that they include representatives of persons working in the rural sector and the informal sector.

5. The Committee notes that the report refers to ILO technical cooperation and advisory activities and requests the Government to indicate any action taken as a result of these activities *(point V of the report form)*.

Italy (ratification: 1971)

1. The Committee notes the Government's report. From the information available to the ILO and contained in OECD reports and studies, the Committee notes that, despite economic recovery, the contraction of total employment continued in 1994 (-1.7 per cent) and 1995 (-0.6 per cent), with the unemployment rate reaching 12 per cent by the end of the period. The characteristics of the distribution of unemployment which the Government considered to be a matter of concern in its previous report have become more accentuated. The gap between the unemployment rate in the north (6.4 per cent in July 1995) and the south (20.7 per cent) has widened, with almost one-third of active persons under 25 years of age being without employment and with long-term unemployment accounting for 63 per cent of the total.

2. The Committee has also noted the comments of the Association of Credit Enterprises (Assicredito), that the unemployment struggle calls for macroeconomic measures in favour of non-inflationary growth, together with structural measures to make the labour market more flexible in particular, as well as raise workers' skill levels.

3. The Government provides information in its report on the measures adopted recently to simplify placement and recruitment procedures, and on the implementation of various incentives for recruitment and the promotion of self-employment. The Committee notes that regional employment offices are requested to supply data on the numbers of persons recruited as a result of the incentives financed by the Employment Fund with a view to making an accurate evaluation of their effectiveness. With reference to the requests for information in the report form, the Committee would be grateful if the Government would indicate in its next report the results of this evaluation and provide information concerning the reform of the employment services envisaged by the Government.

4. The Government also states that the programme of socially useful work intended for the long-term unemployed has been extended in scope. The Committee requests the Government to provide any available information on the contribution of this programme to the reintegration of the persons concerned into employment and to the promotion of full, productive and freely chosen employment. With reference to its previous comments, it also requests the Government to continue supplying information on the use that is made of employment-training contracts. The Committee further requests the Government to transmit the text of any official statement affirming that the promotion of full,

productive and freely chosen employment remains an essential objective, in accordance with *Article 1 of the Convention*. The Government could, as in the past, envisage providing information on the contribution that general economic policies have made or are expected to make to the achievement of employment objectives. The Committee would be grateful to receive information in the Government's next report on developments in the wages and incomes policy since the conclusion of the tripartite agreements in July 1993, as well as information on monetary, fiscal and exchange rate policies, as requested in the report form adopted by the Governing Body. It hopes to be able to note an improvement in the employment situation, which remains a matter of concern.

Morocco (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the information supplied by the Government in its report for the period ending June 1994. The Committee notes that, according to the data contained in the National Statistical Yearbook for 1994, the unemployment rate for the active urban population was estimated at 16 per cent in 1992 and 15.9 per cent in 1993 (and around 30 per cent for the age group 15-24). It notes a correlation between the decrease in the unemployment rate for women (21.7 per cent in 1993 compared with 25.3 per cent in 1992) and the decline in their activity rate, which up to then had been increasing regularly. According to the Government, the imbalance between the supply and demand for labour resulting from the growth of the population (although at a rate that is falling substantially) was aggravated over the reference period by climatic conditions which accentuated the rural exodus and increased the pressure on the urban labour market, as well as by other factors related to the economic situation, such as the decline in the market price of phosphates and the increase in interest rates.
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> 2. The Government states that the major aims of its economic policies are to contribute to economic growth and the promotion of employment through public investment, the promotion of private investment, the development of the rural sector and support for the export sector. It emphasizes that the implementation of the structural adjustment programme has made it possible to improve the financial situation of the country and states that the creation of 15,000 new jobs in the public sector as envisaged by the Finance Act of 1994 is part of the recovery process. With reference to its previous observation, the Committee would be grateful if the Government would supply more detailed information in its next report, in reply to the questions contained in the report form, on the manner in which the measures taken in the various fields of economic policy contribute to the promotion of employment. In particular, it requests the Government to specify the employment objectives of the Social and Economic Organization Plan 1993-97.
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> 3. The Committee notes the establishment of a fund for the promotion of employment of young persons financed through income from privatisation, as well as the adoption of new measures to promote the training of young persons in enterprises. It also notes with interest the information on the results achieved by the programme of loans to young entrepreneurs and would be grateful if the Government would continue to provide detailed information on the various measures adopted for the insertion of young persons into employment and on evaluations of their effectiveness. The Committee also requests the Government to continue providing information on the progressive establishment of the network of employment services.
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> 4. The Government states once again in its report that the consultations required under *Article 3 of the Convention* are held in the framework of the National Council for Youth and the Future (CNJA). With reference to its previous observation, the Committee would be grateful if the Government would supply information on the activities of the CNJA, the

recommendations made and the effect given to them, together with extracts of records of meetings or relevant reports. It also notes that the Government refers to the establishment of an Economic and Social Council under the terms of the Dahir of 9 October 1992 to enact the revised Constitution, as well as the establishment under the Dahir of 24 November 1994 of an advisory council to pursue social dialogue. However, the Committee notes that the Organic Act which, under the terms of article 93 of the revised Constitution, is to determine the composition, organization, duties and methods of work of the Economic and Social Council has not yet been adopted. The Committee would also be grateful if the Government would indicate whether the competence of the advisory council to pursue social dialogue covers consultations on employment policy in the sense set out in the Convention. The Committee hopes that the Government will provide further information in this respect in its next report.

5. *Part V of the report form.* The Committee has been informed of an ILO mission in 1994 for the preparation of a second national symposium on employment. It would be grateful if the Government would indicate the action that has been taken or is envisaged as a consequence of this symposium, and any factors which may have prevented or delayed this action.

Netherlands (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. The Committee notes the Government's report for the period ending June 1994, which was characterized by a slowdown in economic activity and a rise in the unemployment rate, which increased from 6.8 per cent in 1992 to 7.5 per cent in 1994. Certain characteristics in the distribution of unemployment give cause for concern, such as the unemployment rate of women, which is nearly double that of men, the incidence of long-term unemployment and the particularly high rate of unemployment (nearly three times higher) among ethnic minorities. Furthermore, the proportion of employment accounted for by part-time work, particularly among women, is continuing to grow. The Government also emphasizes the continued decline in activity rates and the relatively unfavourable ratio between the active and the inactive population in the Netherlands and refers to the link between employment, the number of inactive persons and social security benefits. The Committee notes in this respect that, according to the OECD, the labour market is affected by various forms of underemployment or "non-employment".

2. The Government, which describes the labour market situation as alarming and without real prospects of improvement in the short term, states that it cannot resign itself to unemployment stabilizing at an ever higher level after each recession. It states that its employment policy has to attack the structural causes of unemployment and lead to growth which produces more employment in sectors which are not exposed to international competition, since an employment structure in which there is no place for the least productive workers is socially unacceptable. The principal aims of the policy concern the strengthening of investment in research and infrastructure, the reduction of wage costs through the adoption of a restrictive wages policy and the improved functioning of the labour market by means of greater flexibility in the field of low wages and deregulation measures, such as the abolition of the requirement for prior authorization for dismissals. The Committee also hopes to find in the Government's next report the information which it requested previously on the manner in which the measures adopted in the fields of monetary and budgetary policy contribute to the promotion of employment.

3. The Committee notes that the aims of the Government's policy described above were submitted to the social partners with a view to the adoption of a joint plan of campaign. It notes with interest the Government's analysis that the gravity of the employment and unemployment problem requires a collective approach. It would be grateful if the Government would provide information on the "constructive consultations" that the Government is calling

for and the measures which are taken in practice in accordance with the requirements and the spirit of *Article 3 of the Convention*.

4. The Committee notes the multi-year policy framework of the Employment Service and the objectives that it sets for the year 1994-98 with regard to the placement in employment of particular categories of the population, such as women, young persons, members of ethnic minorities and persons with disabilities. It requests the Government to provide any available evaluation of the policy implemented for this purpose and to indicate the extent to which these objects have been achieved and have contributed to promoting those set out in *Article 1, paragraph 2(c)*, of the Convention concerning freedom of choice of employment and the possibility for each worker to qualify for, and use their skills without any discrimination. The Committee also refers in this respect to its comments concerning the application of Convention No. 111.

New Zealand (ratification: 1965)

1. In its previous observation, the Committee drew attention to the persistence of a diversity of views between the parties concerned on the question of reforming the labour market. It requested the Government to continue to supply information on the results of the various training and employment programmes and stressed the need under the Convention to strengthen direct tripartite consultations. The Committee notes the Government's full and detailed report for the period ending June 1996 as well as the comments of the New Zealand Employers' Federation (NZEF) and the New Zealand Council of Trade Unions (NZCTU), and the Government's comments in reply to them.

2. The Committee notes that the strong growth in economic activity has resulted in an unprecedented increase in employment (by 9 per cent) and a significant drop in unemployment rates from 9.5 per cent in March 1994 to 6.5 per cent in March 1996 and in the share of long-term unemployed in total figures. The Government indicates that it is still concerned at the level of activity rates which remain lower than those during the 1980s; the persistent high unemployment rate for certain groups, such as the Maori and Pacific Island communities; the increase in the number of people receiving social benefits other than unemployment benefits; and the low productivity gain. Its strategy aims at an open and competitive economy relying on enterprises, price stability, strict budgetary management, flexible labour markets, and reduced taxation. The Government has supplied the Tax Reduction and Social Policy Programme, announced in February 1996, which aims at helping people to get jobs by boosting the available income of households from wages earned. The Government considers that real salaries have tended to increase since 1994.

3. The NZCTU states that it is in fundamental disagreement with the strategy, which does not respond to the requirement of the Convention as to a "coordinated economic and social policy". It considers that the State is withdrawing from applying an investment policy, and the drop in public expenditure on infrastructures and training ultimately threatens competitiveness and employment. In pursuing the sole objective of a stable currency, the monetary authorities are indifferent to the consequences of their decisions for employment. Deregulation of the labour market is resulting in greater dispersal of earned income and a drop in real wages.

4. The Committee requests the Government to continue to supply detailed information in reply to the questions under *Article 1 of the Convention* on the report form adopted by the Governing Body on the macroeconomic policies in question, attempting to analyse their results in terms of the essential purpose of the Convention, which is an active policy aimed at promoting full, productive and freely chosen employment.

5. The Committee notes the labour market policy measures designed to promote employment for the most disadvantaged groups, such as young people and the long-term unemployed, by concentrating on tailoring assistance offered to individual employment seekers. The Committee notes, furthermore, the modifications made in the various income support benefits to make them a greater incentive to seek work. The NZEF draws attention to two other youth employment assistance programmes in which it has cooperated. Meanwhile, the NZCTU refers to the risk in suspending any benefits for refusing a job offer, which infringes the principle of free choice of employment.

6. The Committee would be grateful if the Government would supply any available evaluation of the results obtained by these measures in terms of people obtaining employment. Furthermore, it requests it to specify how the system of unemployment benefits contributes to promoting full, productive and freely chosen employment in the terms of the Convention.

7. *Article 3.* The Government states that the Prime Ministerial Task Force on Employment comprises representatives of employers' and workers' organizations, and has led to one of the most extensive public consultations ever. The NZCTU considers that the fact that this is the only example of consultation which the Government can give confirms the unilateral manner in which employment policy was formulated and the Government's failure to comply with its duty to consult the social partners in order to ensure their collaboration in developing this policy. Recalling the conclusions of the Conference Committee in June 1993, the Committee would stress once again the importance it attaches to giving full effect to this essential provision of the Convention by carrying out regular consultation of the representatives of the persons affected and, in particular, employers' and workers' organizations, both when formulating employment policy and when implementing it. It trusts that the Government will be in a position to relate progress in its next report.

Nicaragua (ratification: 1981)

The Committee notes that in its examination of the representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution, the Governing Body concluded at its 264th (November 1995) Session that the allegations did not show any grounds of non-compliance with the present Convention.

The Committee is again making a direct request to the Government concerning certain other matters.

Papua New Guinea (ratification: 1976)

Further to its previous observations and direct requests over the past ten years, the Committee notes with interest that, following the receipt by the Government of advice from the Office, a report was received just before its present session. The Committee intends to examine this report at its next session. Meanwhile, it hopes the Government will remain in contact with the responsible multidisciplinary team of the ILO as regards the design and implementation of the range of policies and measures called for under the Convention.

Paraguay (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report received in January 1995. The Government indicates that the labour market has been gradually modernizing at a slow but

steady pace which is reflected positively in the reduction of self-employed workers and an increase in the number of wage-earners. The national level of unemployment is relatively low but underemployment affects some 48 per cent of the labour force and constitutes "the main problem on the labour market". The reasons for underemployment are demographic and economic, since the economic infrastructure of the formal sector cannot satisfy job demands adequately and the informal sector serves as a refuge for a large percentage of the labour force. Since underemployment has a greater effect on workers in the rural sector, the Government's efforts are concentrated in this area. An economic and social development programme for 1994-98 has the target of creating jobs in more productive activities, increasing productivity and income in backward activities (small urban businesses and micro-businesses and small rural producers), and the broadening of the job security network. The Committee would be grateful if the Government would specify in its next report if there have been particular difficulties in reaching the employment objectives set out in this programme and indicate to what extent these difficulties have been overcome. It would greatly appreciate information on the situation, level and trends in employment, unemployment and underemployment in the country as a whole and on the extent to which it affects particular categories of workers such as women, young people, indigenous people and rural workers who have difficulty in finding lasting employment and how those workers are affected by industrial restructuring processes.

2. With reference to the comments its has been making for several years, the Committee notes that information has been included in the report on a policy of dialogue and consultation promoted by the Ministry of Justice and Labour. A tripartite negotiating board has been set up whose central themes are wages, the formulation and proposal of employment programmes, and social security. The Committee welcomes this progress in the application of *Article 3 of the Convention* which lays down that representatives of the persons affected shall be consulted concerning the measures to be taken to promote the objectives of full, productive and freely chosen employment. It would be particularly useful for a labour market such as that described by the Government that the consultations required under the Convention should also take place with representatives of workers from the informal and rural sectors and that their participation might be envisaged in the formal consultation machinery mentioned in the report. The Committee would be grateful if the Government would include indications on any new progress made in this matter.

3. In reply to previous comments, the Government states that its prime objective is the development of human resources through training and improvement of employment opportunities. Workers are offered free vocational guidance and training services by the National Employment Service, the Programme of Associated Young Persons Enterprises and the National Service for Vocational Promotion. The Government states that these efforts claim not only to coordinate occupational training policies and activities with real employment prospects but also to ensure that young people in particular and workers in general achieve effective integration into the labour market with a lasting job and/or full productive activity where they can develop to the maximum their potential, as required in Convention No. 122, Convention No. 142 and Recommendation No. 150 on the development of human resources, 1975. The Committee requests the Government to continue supplying information on specific developments in the activities mentioned above in order to ensure that workers who have benefited from the programmes can access the labour market and find lasting employment.

4. In a direct request, the Committee is asking the Government certain questions on other aspects of the application of the Convention related to compilation and analysis of statistics, rural employment and employment in the informal sector.

Peru (ratification: 1967)

The Committee notes the Government's report. It notes, furthermore, that at its 267th Session (November 1996), the Governing Body approved the report of the

Committee which it had instructed to examine the claims presented under article 24 of the ILO Constitution by the Latin American Central of Workers (CLAT) and the Single Confederation of Workers of Peru (CUT), alleging non-observance by Peru of Conventions Nos. 11, 87, 98, 100, 111 and 122. The Governing Body requested the Government to supply in its next report submitted under article 22 of the Constitution on the application of Convention No. 122 full information on:

(i) any available surveys on the results obtained by the youth training agreements (sections 8 to 16 of the Promotion of Employment Act), in which reference is made to the long-term integration of those concerned, and to the possible repercussions of these programmes on the employment of other age categories in the active population;

(ii) the measures taken or foreseen to ensure that the application of the provisions of the Promotion of Employment Act with respect to employment contracts subject to special conditions (sections 87-117), the promotion of self-employment (sections 137-144) and special enterprises (sections 165-174) contribute effectively to the creation of new jobs;

(iii) the effect given to the provisions of Article 3 of the Convention.

The Committee asks the Government to supply the information requested in order to allow it to resume examination of the application of the Convention at its next session.

[The Government is asked to report in detail in 1997.]

Poland (ratification: 1966)

The Committee notes the report of the Committee set up to examine the representation made in 1993 under article 24 of the ILO Constitution by the All-Poland Trade Union Alliance (OPZZ), alleging non-observance of the Convention by Poland, which was approved by the Governing Body at its 265th Session in March 1996 (document GB.265/12/5). It also notes the Government's brief report for the period ending June 1996. This report describes a number of changes, particularly as regards the employment of graduates, unemployment benefit and the management of regional labour markets. However, the Committee notes that the report does not contain all the information requested by the Governing Body.

The Committee also refers to its previous observation and direct request and trusts that the Government's next report will, in addition to the description of the situation and trends of employment, underemployment and unemployment during the period under consideration, contain all the information required in accordance with the recommendations of the Committee set up by the Governing Body, namely:

- complete and detailed information on the results obtained through the various labour market policy measures that are implemented, with an indication of any shortcomings or difficulties that it may have encountered and the manner in which it proposes to deal with them, and the use it has made of ILO technical cooperation projects and other international technical assistance to promote employment and reduce unemployment;
- a description of how account is taken of employment objectives when general economic and social policy decisions are taken, and complete information in reply to the questions in the report form under *Articles 1 and 2 of the Convention*;
- complete information on the manner in which the representatives of the persons affected are consulted, particularly in the Higher Employment Council and in

accordance with *Article 3* of the Convention, on all aspects of economic policy which affect the employment market;

- the manner in which the unemployment compensation policy contributes to the pursuit of the Convention's objectives, particularly as regards the planned introduction of an unemployment insurance system.

The Committee suggests that the Government remain in contact with the competent services of the ILO, and particularly the multidisciplinary team in Budapest, in order to obtain, where necessary, their technical support in relation to the above matters.

[The Government is asked to report in detail in 1997.]

Spain (ratification: 1970)

1. With reference to its previous observation and to the discussion held in the Conference Committee in June 1995, the Committee notes the Government's report for the period ending June 1996. It also notes the comments received from the Confederación Sindical de Comisiones Obreras (CC.OO.) and the General Workers Union (UGT).

2. The Committee notes the detailed description of developments in employment and unemployment provided by the Government from which it emerges that the upsurge in employment in 1995 has resulted in a slight decrease in unemployment levels, which dropped from 24.2 per cent in 1994 to 22.9 per cent in 1995. According to the OECD, it should stabilize at this very high level in 1996. The Committee observes the persistence of the most serious aspects of unemployment, such as the rate for young people, the growing proportion of long-term unemployment and strong regional disparities. The CC.OO. emphasizes that Spain has both the highest unemployment rate among developed countries and the highest incidence of precarious employment, which is linked, in its view, to the frequency of industrial accidents. The UGT raises the high labour turnover: deregulation, unstable employment contracts and low wages are policies which impact unfavourably on qualifications and competitivity.

3. The Government states that its employment policy continues to rely on two main approaches: first, employment on contracts without limit of time and, secondly, different types of fixed-term contracts introduced under the reform of the labour market in order to benefit employment of the categories of unemployed experiencing the greatest difficulties. The Committee notes the adoption of new incentives to employ long-term unemployed and provisions governing the content of training in apprenticeship contracts. The Committee requests the Government to supply in its next report any available assessment of the results obtained from the various employment and training incentives it describes.

4. The Committee appreciates the information supplied but notes that the Government's report is restricted essentially to describing labour market and training policy measures which do not in themselves seem yet to have produced a significant reduction in unemployment levels. It regrets that the Government has not responded to the reiterated request to supply information enabling an assessment of how its employment policy falls "within the framework of a coordinated economic and social policy" (*Article 2 of the Convention*). The Committee trusts that the Government's next report will, in response to the questions under Article 1 in the report form approved by the Governing Body, specify how the decisions taken on, particularly, monetary and budgetary policies, price, income and salary policies and investment policies contribute effectively to promoting "as a major goal" full, productive and freely chosen employment. It also requests the Government to continue to supply detailed information

on how the representatives of the sectors concerned, and particularly representatives of employers and workers, are consulted on the subject of employment policies, in accordance with *Article 3.*

Tunisia (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes with interest the Government's report for the period ending June 1994, which contains valuable information on changes in the employment situation and on the objectives, forecasts and achievements of the VIIIth Economic and Social Development Plan (1992-96). The Committee notes that around 14 per cent of the active population were unemployed in 1993 and that nearly one half of the unemployed were under 25 years of age. The Government states that, in view of the growth of the active population, the creation of new jobs during the first two years of the implementation of the VIIIth Plan was lower than the planned annual average rates required to achieve the objective of an unemployment rate of 13 per cent in 1996. It nevertheless remains confident that this priority objective can be achieved as a result of structural reforms to encourage investment and employment in industry and services, as well as specific measures designed to promote the occupational integration of young persons. The Committee requests the Government to indicate any new general economic policy measure adopted to promote the expansion of employment. In particular, it would be grateful if the Government would indicate the measures that have been taken or are envisaged to ensure that the implementation of the recent association agreement concluded with the European Union has a beneficial impact on the employment situation.
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> 2. The Government reports the harmonization and strengthening during the reporting period of measures to promote the employment of young persons. New measures have been taken to encourage enterprises to recruit the beneficiaries of the various youth employment measures following their training period and, according to the Government, the results achieved bear witness to the improved effectiveness of these measures. The Committee requests the Government to continue supplying detailed information on the evaluation of programmes for the integration of young persons into the labour market and, more generally, on the manner in which education and training policies are coordinated with prospective employment opportunities in the context of the higher school attendance rates. In this respect, the Committee notes the establishment of a National Council for Vocational Training and Employment responsible for issuing opinions and making proposals in the field of employment and training policy. It hopes that the Government will supply full information on the measures proposed by this body and in reply to the request addressed directly to it concerning the application of the Human Resources Development Convention, 1975 (No. 142). The Committee also notes the implementation of a new integrated programme of support for the creation of employment in backward regions which is designed to combat unemployment and poverty in rural areas through the provision of assistance to young entrepreneurs and increased measures to promote artisans and micro-enterprises. It also requests the Government to indicate the results achieved by this programme in its next report.
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> 3. The Committee notes with interest that the National Council for Vocational Training and Employment, referred to above, includes representatives of employers' and workers' organizations. It requests the Government to indicate whether the Economic and Social Council also examines matters relating to employment policy. The Committee recalls in this respect that the consultations required under *Article 3 of the Convention* should include representatives of the persons affected by the measures to be taken, such as those working in the rural sector and the informal sector, and that they should cover all aspects of economic policy that affect employment.

United Kingdom (ratification: 1966)

Further to its previous observation, the Committee notes that the Government's report for the period ending May 1996 was received on 11 November. Comments of the Trades Union Congress (TUC) were received on 28 November, having been simultaneously transmitted to the Government.

The TUC has referred to the vital role of the public employment services in the achievement of full employment. Rather than being concerned with policing the benefits system, the employment service should be engaged in active labour market policies as advocated by the OECD, including helping individuals return quickly to work, thus maximizing the job impact of growth; improving flexibility of labour markets by providing free services and advice for unemployed people and employers; raising the quality of job opportunities by enforcing minimum standards, informing employers and workers also of training opportunities; and helping overcome discrimination by targeting particular groups. The United Kingdom's comparative record of spending on active labour market measures is said to be poor, and results of training undergone in terms of later employment are weak. Compulsion, says the TUC, forces unemployed people to waste their time on activities which do not help them to get work; and workfare-type schemes force the weakest into badly paid jobs, destroying the good ones.

The Committee hopes the Government will supply its comments.

[The Government is asked to report in detail in 1997.]

Uruguay (ratification: 1977)

1. The Committee notes the Government's detailed report for the period ending June 1996. The Government reports a slow-down in the rate of employment growth during the period and an unemployment rate of 11.8 per cent in 1995, which amounts to an increase of one percentage point in one year. Unemployment continues to affect women and young persons under 24 years of age in particular. The Government reports growth in self-employment, which accounts for nearly 20 per cent of total employment and could be related to growth in the informal sector. The Committee notes with interest the establishment of a body to monitor the labour market with the support of CINTERFOR and notes also the wider responsibilities of the National Directorate of Employment with regard to general oversight, research support, promotion, coordination, design, evaluation and administration of active employment and vocational training policies. It requests the Government to continue providing information on employment and unemployment and to describe the activities of the new Directorate, including the manner in which it contributes to the declaration and pursuit of a policy of full, productive and freely chosen employment, in the terms of *Article 1 of the Convention*.

2. With reference to its previous observation and recalling that under the terms of *Article 2* of the Convention the measures to be adopted to promote employment must be "within the framework of a coordinated economic and social policy", the Committee once again requests the Government to indicate the manner in which the measures taken in fields such as fiscal and monetary policies, trade policy and investment policy contribute to the attainment of employment objectives (see the report form adopted by the Governing Body).

3. The Committee notes the Bill for the promotion of training and vocational integration of young persons, which was transmitted by the Government, and requests the Government to continue providing information on the measures which have been

taken in order to improve the coordination of education and training policies with prospective employment opportunities.

4. *Article 3.* The Committee notes that the Government emphasizes the importance of the role played by the National Employment Council, which is tripartite, in the formulation of employment policies. With reference to its previous comments, the Committee would be grateful if the Government would indicate whether it envisages finding means of associating the representatives of persons working in the rural sector and the informal sector in consultations on employment policies with a view to taking into account their experience and views, securing their full cooperation in the formulation of these policies and enlisting support for them.

5. The Committee notes the information provided by the Government on the ILO technical cooperation and advisory activities from which it has benefited, particularly through the work of the ILO multidisciplinary team and CINTERFOR. It requests the Government to indicate in its next report the action taken as a result of these activities *(Part V of the report form)*.

Venezuela (ratification: 1982)

1. The Committee notes the Government's report for the period ending June 1996 and the information sent in reply to the previous observations and direct requests. It notes, however, that the report does not include the statistical information required by the report form adopted by the Governing Body (see under *Article 1 of the Convention*). The Committee once again requests the Government to supply the fullest possible data on the situation, employment levels and trends, both globally and in regard to particular categories of workers.

2. The Committee notes the creation of state employment coordination bodies responsible for analysing regional characteristics of the labour market with a view to formulating appropriate employment policies. It requests the Government to indicate how these coordinating bodies contribute to determining and, in the framework of a coordinated economic and social policy, regularly reviewing the measures to be adopted with a view to promoting full, productive and freely chosen employment, in accordance with *Article 2*.

The Committee is raising other questions in a direct request.

Zambia (ratification: 1979)

1. The Committee notes the Government's report for the period ending in June 1996, and the discussion that took place in the Conference Committee at its June 1995 Session. It notes that, in its explanations to the Conference Committee and in its report, the Government states that it is endeavouring to promote job creation by establishing an environment conducive to local and foreign investment and that, since 1991, measures have therefore been taken to liberalize trade, deregulate markets, strengthen the financial sector and privatize state enterprises. The Government considers, however, that the effects of this structural adjustment programme will begin to show only in the coming years and that, for the time being, the programme's impact on employment and living standards is negative. The statistics provided by the Government show that employment in the formal sector declined during the period in question, owing largely to the reduction in public sector employment. The informal sector, on the other hand, has grown, having absorbed part of the increase in the active population, and now accounts for almost 85 per cent of total employment.

In this context, the Committee notes, from the World Bank's report on Zambia published in August 1996, the hardship that the structural adjustment programme has created for workers in the informal sector, leading to a deterioration in the potential of human resources. In view of the objective of full, productive and freely chosen employment described in *Article 1 of the Convention*, which the Government fully acknowledges, and of the need for an adequate information base, in order to determine and implement such measures as may be appropriate under national conditions (see under Article 2 in the report form adopted by the Governing Body), the Committee asks the Government to continue to provide available statistical data on the situation and trends in employment. The Committee would be grateful for information on any progress, in particular with ILO technical assistance, in establishing a labour market information system.

2. The Government refers in general terms to measures to soften the negative impact of structural adjustment on the most affected groups of the population and to assist and counsel retrenched workers. With reference to its previous observation, the Committee notes the absence of more precise information on the exact nature and scope of social measures taken to accompany the structural adjustment policy. The Government sets out briefly the objectives of the Investment Act, 1991 and the Privatization Act, 1992. The Committee notes that studies have been commissioned to assess the impact of privatization on employment, and asks the Government to provide the conclusions of these studies as soon as they are available. It trusts that the Government will keep in close contact with the ILO in order to conclude these studies and consider what measures are needed in the light of the objectives of the Convention.

3. The Committee expressed concern in its previous observation at the difficulties apparently encountered in devising and applying an employment policy within the meaning of the Convention. It trusts that, perhaps in cooperation with the competent units of the ILO, the Government will in its next report be able to provide the information required by the report form on the measures adopted within the framework of a coordinated economic and social policy in order to promote, as a major goal, a policy in keeping with Article 1 of the Convention. In addition, it asks the Government to provide detailed information on consultations held in practice with representatives of the persons affected concerning employment policies implemented, indicating the views of those consulted and the manner in which they were taken into account in accordance with *Article 3*. The Committee recalls, as did the Conference Committee, that representatives of workers in the rural and informal sectors should be associated in such consultations.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Austria, Barbados, Belarus, Bosnia and Herzegovina, Cameroon, Chile, Comoros, Croatia, Cyprus, Czech Republic, Djibouti, Ecuador, Guinea, Islamic Republic of Iran, Iraq, Jamaica, Republic of Korea, Libyan Arab Jamahiriya, Madagascar, Mongolia, Nicaragua, Panama, Papua New Guinea, Paraguay, Russian Federation, Senegal, Slovenia, Sudan, Suriname, Thailand, Venezuela, Yemen.*

Convention No. 123: Minimum Age (Underground Work), 1965

Nigeria (ratification: 1974)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following points:

> Referring to comments made for a number of years, the Committee has requested the Government to indicate measures taken to give effect to the Convention, under which the employer shall make available to the workers' representatives, at their request, lists of the persons who are employed on work underground and who are less than two years older than the minimum age specified by the Government (i.e. persons under 18 years in Nigeria). The lists should contain the dates of birth of such persons and the dates at which they were employed or worked underground in the undertaking for the first time. It expresses the hope that the Government will report on any measures taken in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Rwanda (ratification: 1970)

The Committee notes that the Government's report received in 1995 gives no further reply to previous comments. It must therefore repeat its previous observation on the following points:

> In the comments that it has been making since 1974, the Committee has noted the Government's intention to bring its legislation into conformity with the Convention. It also notes that the Government, in the third quarter of 1990, requested and received an opinion from the Office relating to a draft amendment to the Labour Code with regard to Articles 2 and 4 of the Convention. The Committee notes, according to the Government's report, that no provision has yet been adopted in this respect. It hopes that the Government will rapidly be in a position to supply information on the measures that have been taken in order to determine:
>
> (a) in accordance with *Article 2 of the Convention*, that a minimum age of 18 years shall be set for admission to employment or to underground work in mines, including employment and underground work in quarries;
>
> (b) in accordance with *Article 4, paragraphs 4 and 5*, that the employer shall keep, and make available to inspectors, records in respect of persons who are employed or work underground and who are less than 2 years older than the minimum age specified by the Government, namely persons less than 20 years of age in the case of Rwanda, and that these records shall indicate the date of birth of these persons and the date on which they were employed or worked underground in the undertaking for the first time;
>
> (c) in accordance with *Article 4, paragraph 1*, that appropriate penalties shall be provided for in order to ensure the effective enforcement of the minimum age that has been fixed.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Bolivia, Cyprus, Gabon, Mongolia, Paraguay, Poland, Saudi Arabia, Switzerland, Syrian Arab Republic, Viet Nam.***

Convention No. 125: Fishermen's Competency Certificates, 1966

Sierra Leone (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In earlier comments the Committee noted that there exist no laws or regulations to give effect to the Convention. The Committee recalled the Government's earlier statement that the fishing industry is carried out mostly by vessels of less than 25 GRT not covered by the Convention and its indication that in so far as there may be larger vessels to which the Convention applies, efforts were being made to obtain information from the responsible authorities. The Committee also recalled that under section 57(n) of the Fisheries Management and Development Bill, the Minister would have the power to prescribe qualifications for manning of fishing vessels and thus to draft regulations to apply the Convention. The Committee notes the information provided by the Government in its latest report that it has formulated new regulations for the fishing industry which would incorporate the Committee's comments. The Committee hopes that the Government will provide information on the measures adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Panama, Senegal.*

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Bolivia (ratification: 1996)

The Committee notes the comments communicated by the National Confederation of Pensioners of Bolivia (Confederación Nacional de Jubilados y Rentistas de Bolivia), as well as those communicated by the Bolivian Central of Workers (Central Obrera Boliviana) with respect to a new draft Law on pensions. According to these organizations, the draft law would ignore the provisions contained in certain social security conventions, in particular Convention No. 128. These comments were sent to the Government on 28 September 1995 and 2 September 1996, respectively. As the Government's report has not been received, the Committee can only trust that in the elaboration of any new piece of legislation, including a new Pension Law, the requirements of the Convention will be fully taken into consideration. It hopes that the Government's next report will contain a reply to the comments of the aforementioned organizations, as well as the text of the Bill or the Law on pensions, if adopted.

[The Government is asked to report in detail in 1997.]

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. It recalls that the Government's previous report did not contain the information which has been requested on several occasions on the manner in which effect is given to *Part V, Article 29 of the Convention (review of cash benefits currently payable)*, which provides that the rates of cash benefits currently payable pursuant to *Article 10 (invalidity benefit), Article 17 (old-age benefit) and Article 23 (survivors' benefit)* shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living. In this respect, the Committee recalls its general observations made in 1989 with respect to Conventions Nos. 102 and 128, in which it considered that, given the effects of inflation on the general level of earnings and increases in the cost of living, revision of the level of long-term benefits should receive governments' particular attention in the current context of the general economic situation. The Committee therefore once again requests the Government to make every endeavour to ensure the application of Article 29 above and to supply the statistics called for under this Article of the Convention in the report form adopted by the Governing Body.

The Committee hopes that the Government's next report will also contain a detailed reply to the questions which it has been raising for many years and which it is recalling in a request addressed directly to the Government.

Switzerland (ratification: 1977)

I. With reference to its previous observation concerning *Part II (Invalidity benefit), Article 12, of the Convention* (in relation to Article 32, paragraph 1(e)), the Committee notes with satisfaction the reversal of the case-law relating to the direct applicability of the above-mentioned provisions of the Convention by the Federal Insurance Court (TFA) in a decision of 25 August 1993, of which the text has been supplied by the Government. In its decision, the TFA considered that *Article 32, paragraph 1(3)*, of the Convention, which provides that cash benefits may be withheld where the contingency has been wilfully caused by the serious misconduct of the person concerned, applies directly and takes precedence over section 7(1) of the Federal Invalidity Insurance Act (LAI) to the extent that this standard of federal law provides, in particular, the reduction of benefits for serious misconduct committed by negligence.

Consequently, the Government concludes in its report that, contrary to the provisions of the Act, negligence, even when serious, is no longer sufficient grounds for reduction of invalidity insurance benefits and that the situation prevailing in Switzerland is in conformity with the provisions of Article 32, paragraph 1, of the Convention, given the self-executing nature of this provision, which is recognized by the TFA. The Government adds that national legislation will be brought officially into conformity with the Convention once the Bill on the general part of social insurance law enters into force. The Committee requests the Government to keep it informed of any developments in this matter, in both legislation and practice.

II. Furthermore, the Committee notes with interest, from the information supplied in the Government's report, the adoption of the tenth revision of the Old-Age and Survivors' Insurance Act which will enter into force on 1 January 1997. The Committee hopes that the Government's next report will contain detailed information on the effects of this legislation on *Parts III and IV* of the Convention.

Venezuela (ratification: 1982)

1. *Part II (Invalidity benefit), Article 10; Part III (Old-age benefit), Article 17; Part IV (Survivors' benefit), Article 23* (in conjunction with Article 26) *of the Convention*. In reply to the comments made by the Committee for several years, the Government once again states that statistics on the calculation of benefits as requested in the report form are not available.

The Committee recalls that, in accordance with section 98 of the General Regulations under the Social Insurance Act, the wage that is subject to contributions which serves as a basis for the calculation of benefits is subject to a ceiling. In this respect, the Convention, in order to prevent the ceiling being set at too low a level and therefore reducing in practice the scope of the protection provided, states in *Article 26, paragraph 3*, that the required level of benefits must be attained where the previous earnings of the beneficiary or his breadwinner, are equal to or lower than the wage of a skilled manual male employee. Although fully aware of the difficulties encountered by the Government, the Committee is bound to insist once again on the fact that the absence of statistics, as required in the report form approved by the Governing Body under Titles I to IV of Article 26, do not yet enable it to assess the manner in which effect is given to the above Articles of the Convention. In these conditions, it once again hopes that the Government will make every effort to compile the above statistics and transmit them with its next report.

2. *Part IV (Survivors' benefit), Article 21, paragraph 1* (in conjunction with Article 1(h)(i)). In reply to the Committee's previous comments concerning the need to amend section 33 of the Social Insurance Act in order to raise from 14 to 15 years the age up to which children shall be entitled to a survivors' pension, the Government states that no change is currently envisaged to the above Act. In these circumstances, the Committee is bound to urge the Government once again to take the necessary measures to bring the national legislation into full conformity with the Convention on this point.

3. *Part V (Standards to be complied with by periodical payments), Article 29.* The Committee notes the information supplied by the Government on the adjustment of certain pensions following the adoption of the Act to harmonize social insurance pensions and the retirement benefits and pensions of the public administration with the national minimum wage (minimum subsistence pension). In order to be in a position to assess the manner in which effect is given to Article 29 in practice, the Committee hopes that the Government's next report will contain the statistics requested in the report form under this Article of the Convention both with regard to the adjustment of the benefits currently paid to a standard beneficiary (and not only the minimum subsistence pension), and changes in the cost of living and the general level of earnings during the period covered by the report.

4. *Part VI (Common provisions), Article 32, paragraph 1(d) and (e) and paragraph 2.* In its previous comments, the Committee requested the Government to bring section 160 of the General Regulations under the Social Insurance Act, according to which the pension is not provided when the contingency is caused by a violation of the law, a crime or an offence against morals or decency, into formal conformity with *Article 32, paragraph 1(d) and (e)*, which only authorizes the suspension of benefit where the contingency has been caused by a criminal offence committed by the person concerned, or by the serious misconduct of the person concerned. In its latest report, the Government states in this respect that no amendment to the General Regulations under the Social Insurance Act is currently envisaged. In these conditions, the Committee cannot but once again hope that the Government's next report will indicate the measures which have been taken or are envisaged to bring the national legislation formally into conformity with the above provisions of the Convention. It also hopes that on the occasion of the revision of the legislation full account will be taken of *Article 32, paragraph 2*, of the Convention, which provides that in the case of the suspension of the benefit, part of the benefit otherwise due shall be paid to the dependants of the person concerned.

5. *Part VII (Miscellaneous provisions), Article 38.* The Committee notes the information supplied by the Government. It would be grateful if the Government would supply detailed information in its next report on the implementation of the Convention with regard to employees in the agricultural sector, with an indication in particular of

any increase in the number of employees protected in the agricultural sector, in accordance with *paragraph 3 of Article 38.*

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Bolivia, Ecuador, Germany, Libyan Arab Jamahiriya, Netherlands, Sweden, Switzerland.*

Convention No. 129: Labour Inspection (Agriculture), 1969

General observation

The Committee refers to its general observation under the Labour Inspection Convention, 1947 (No. 81), the contents of which apply *mutatis mutandis* to Article 27(f) and (g) of Convention No. 129.

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report to the effect that the preliminary draft of the new General Labour Act has incorporated the agricultural sector into the scope of its provisions through the abolition of the exception covering agricultural work contained in the current legislation. It also notes that measures will be adopted to establish a system of inspection covering all agricultural enterprises under the regulations that are to be issued under the Administrative Reform Act No. 1493 of 17 September 1993, known as the Executive Authority Ministries Act. With reference, *mutatis mutandis*, to its comments on the application of Convention No. 81, the Committee trusts that the Government will take the necessary measures in the near future to give full effect to the provisions of this Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, Morocco, Netherlands, Romania.*

Convention No. 130: Medical Care and Sickness Benefits, 1969

Finland (ratification: 1974)

With reference to its previous comments concerning the application of *Article 17 of the Convention*, the Committee notes the information provided by the Government in its report of 1991-94 together with the comments made by the Confederation of Unions for Academic Professionals (AKAVA) and the Central Organization of Finnish Trade Unions (SAK).

Both organizations point out that, as part of the Government's saving programme, compensation for medical treatment has been reduced and the share of the cost borne by the patient has grown, in particular for physicians' fees, out-patient and in-patient fees and medicines. At the same time, the right to deduct medical costs from the taxable income has been discontinued. The savings programme has particularly affected access to dental care, which has not been extended to unprotected segments of the population, despite the promises given. According to the AKAVA, central and local government cost cutting also threatens to reduce medical services in the public sector. The SAK considers that the scope and availability of medical care services, as defined in *Article 13* of the Convention, is problematic because of scarcity and of the economic difficulties of those in need of such services.

In its report, the Government confirms that, as part of the Government saving programme, sickness insurance benefits have been cut, more costs have been shifted to patients, and as from 1992 medical costs are no longer tax deductible. As a result of the sharp decline in public resources, it has been considered justifiable to assign some health care responsibilities to the private sector. The new state subsidy scheme which took effect in 1993 has contributed to reinforcing the significance of the private sector, side by side with public services, by giving local authorities the chance of buying the services they offer from the private sector through competitive bidding. Over 27 per cent of all physicians' services in the community care sector compensated under the sickness insurance scheme were provided by private physicians. In principle, 60 per cent of physicians' fees are compensated, but in practice this compensation averaged about 36 per cent in 1993, as a result of the lower fee scale introduced by the Government. For medical examination and treatment ordered by physicians, the compensation is fixed at 75 per cent of the part exceeding the patient's "own risk" per medical order in accordance with the confirmed fees. However, the average compensation for these services amounted to only about 38 per cent in 1993. As regards dental care, about half of all expenditure on these services was spent in the private sector. The compensation percentage for dental treatment is 90 per cent and for other care 60 per cent of the confirmed fees. In practice though, it amounted to about 55 per cent on average in 1993. Generally, those born before 1956 are not entitled to compensation for costs incurred from dental care. This has been considered a real shortcoming and the Government has in fact been preparing to extend the coverage to the whole population. However, this has been postponed until the beginning of 1996 in order to curb government spending.

The Committee notes from the above information that, due to economic difficulties and the need to curb government expenses, the accessibility of medical care has been influenced in recent years, on the one side, by the continuous reduction of the level of compensation and the increase of the patient's own share in the cost of such care, and on the other side, by the significant shift in the provision of medical services from public to private sector to the extent that the above-mentioned occupational organizations have expressed concern with the "scarcity" of public medical services. At the same time, according to the figures given by the Government, compensation for care provided in the private sector by physicians and on their orders, as well as for dental care, attained in practice on average only 36, 38 and 55 per cent respectively of total cost, the rest of which has to be borne by the patient himself. In this situation, the Committee wishes once again to draw the Government's attention to the principle laid down in Article 17 of the Convention, according to which the rules concerning sharing by the beneficiary or his breadwinner in the cost of medical care should be so designed as to avoid hardship and not to prejudice the effectiveness of medical and social protection. It also draws the Government's attention to *Article 30* according to which the State shall accept general responsibility for the provision of benefits due under the Convention and in particular for medical benefit provided for under *Article 13*. The Committee therefore hopes that in view of the situation the Government will reconsider its policy in light of Articles 13, 17 and 30 and reinforce public health care facilities, and will take the measures necessary to ensure that the level of compensation for medical care prescribed in the legislation actually is being applied in practice. In this respect, it asks the Government to continue to furnish in its next report the recent statistical data on the volume and proportion of medical care provided by each of the public and private sectors and on the average level of compensation by type of medical care provided by the private sector. Finally, as regards access to dental care, the Committee hopes that the Government will report on the progress made in extending coverage for dental care to the whole of the adult population, in accordance with its stated intentions.

Libyan Arab Jamahiriya (ratification: 1975)

With reference to the comments which it has been making for a number of years, the Committee notes with regret that the Government's report has not been received for the third consecutive time. It recalls that the previous information supplied by the Government contained only partial responses and did not include the statistics called for in the report form adopted by the Governing Body. As without this information it is impossible for the Committee to assess the extent to which effect is given to the provisions of the Convention, it once again raises the matter in a direct request in the hope that the Government will not fail to supply the information requested.

Venezuela (ratification: 1982)

1. *Part II (Medical care), Article 10, and Part III (Sickness benefit), Article 19 (in relation with Article 5), of the Convention.* With reference to its previous comments, the Committee notes with interest from the Government's report that the coverage of the general social security scheme has been extended to the public sector employees, as regards medical care and cash benefit for temporary incapacity, by Decree No. 3325 of 13 January 1994, and that basic principles permitting the affiliation of artisans and artists to this scheme were laid down by Decree No. 2558 of 1992. The Government adds that studies have been carried out with a view to extending its coverage further to some other categories of workers and geographical regions of the country. The Committee also observes that in 1995 according to the available statistics (supplied by the Government in its report under Convention No. 102 as well as in the Venezuelan Statistical Yearbook of 1994), the general insurance scheme covered only about 55 per cent of the total number of employees in the country. Taking account of the previous comments made by the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) highlighting the difficulties in this process, the Committee hopes that the Government will continue its endeavours to progressively extend the social security scheme to the whole of the country, so as to attain in particular the level of coverage set out by the above-mentioned provisions of the Convention. It also hopes that the next report of the Government will contain detailed information in this respect, including up-to-date statistics required in the report form on the Convention adopted by the Governing Body, both for the private and the public sectors.

2. *Part II (Medical care), Article 13.* For a number of years the Committee has been asking the Government to indicate what specific provisions in laws, regulations or administrative rules guarantee the provision of the types of the medical care required by *Article 13* of the Convention and, in particular, to supply the text of the internal rules to be issued by the Board of Governors of the IVSS in pursuance of section 119 of the General Regulations of the Social Insurance Act, that the IVSS will provide medical benefits in the form and conditions set forth by the Board. In reply, the Government refers to the information supplied in its report under Convention No. 102 and, in

particular, to the regulations of hospitals of the IVSS, a copy of which was supplied in the annex to its report on Convention No. 102. The Committee observes that while these regulations contain detailed provisions concerning the internal organization of the medical services in hospitals, they do not specify, as neither do the Social Insurance Act and its General Regulations, the types of medical care ensured to the protected persons. In this situation and taking into account that, according to the Government's report on Convention No. 102, the IVSS is currently undergoing restructuring, the Committee would urge the Government to take the necessary measures with a view to expressly specifying in the legislation the types of medical care provided by the IVSS to the insured persons, which should include at least those mentioned in Article 13 of the Convention.

3. *Article 16, paragraph 1.* The Government states that the Committee's comments concerning the need to bring the content of section 127 of the General Regulations of the Social Insurance Act in line with the established practice of the IVSS to provide medical assistance throughout the contingency, have been noted. The Committee therefore hopes that in its next report the Government would not fail to indicate measures taken to this end and in the meantime to supply the text of any decisions, circulars or other administrative regulations of the IVSS establishing the said practice.

4. *Article 16, paragraphs 2 and 3.* In its previous comments the Committee had asked the Government to supply the text of any decisions, circulars or other administrative regulations of the IVSS establishing the practice to continue to provide medical care where a beneficiary ceases to belong to one of the categories of persons protected when the sickness started while he or she still belonged to the said category. In its reply, the Government states that this practice is not yet reflected in the social security legislation. In this situation the Committee again asks the Government to take the necessary measures to ensure that full effect is given to these provisions of the Convention in the legislation as well.

5. *Part III (Sickness benefits), Article 22 (in conjunction with Article 1(h)).* In its previous comments the Committee had requested the Government to supply statistical information called for under Titles I and II of the report form under this Article of the Convention, in order to enable it to ascertain whether the amount of the sickness benefit attains the percentage prescribed by the Convention (60 per cent) for a standard beneficiary (a man with a wife and two children) whose wage is equal to that of a skilled manual male employee, in accordance with *paragraph 3 of Article 22*. In reply, the Government refers to the statistics of the IVSS attached to its report. As these statistics have not reached the Office, the Committee once again asks the Government to provide the statistical information requested in its next report.

6. *Part IV (Common provisions), Article 28, paragraph 2.* With reference to its previous comments concerning section 144 of the General Regulations of the Social Insurance Act providing for the withdrawal or reduction of cash benefits for temporary incapacity, the Committee hopes that, when this legislation is next revised, the Government will not fail to ensure that in the appropriate cases part of the suspended benefit shall be paid to the dependants of the person concerned, as required by this Article of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Costa Rica, Libyan Arab Jamahiriya, Uruguay.*

Convention No. 131: Minimum Wage Fixing, 1970

Brazil (ratification: 1983)

The Committee notes the observations made by the National Union of Labour Inspectors (SNAIT) concerning the fact that the Government did not respect the obligation to consult the representative organizations of employers and workers on the latest adjustment of the minimum wage and that the Congress was only consulted subsequently.

According to the SNAIT, the absence of consultation of the representative organizations of employers and workers concerning the adjustment of the minimum wage was recognized by the Minister of Labour during a meeting with the Unique Workers' Central (CUT) and through the press, where he stated that "the minimum wage cannot be negotiated".

The Government states that the current minimum wage in the country was determined by Provisional Resolution No. 1415, of 29 April 1996 (*Official Journal of the Union*, 30 April 1996), and is currently before the Congress for approval. According to the Government, a Provisional Resolution is an instrument provided for by article 62 of the federal Constitution, which can be used by the President of the Republic in cases of emergency or necessity. It has force of law and must, immediately following publication, be submitted for approval to the National Congress. The Government explains that the adjustment of the minimum wage meets the needs of workers and their families as well as the requirements of economic development, productivity and the maintenance of a high level of employment. When fixing the rate of the minimum wage, the Government took into consideration economic issues and consulted with the representatives of employers and workers. The Government therefore considers that it has not in any way infringed the principles of the Convention. Its intention was to preserve employment while assuring a minimum income to Brazilian workers, using methods that are compatible with the Economic Stabilization Plan established in 1994.

The Committee notes the Government's statement. It recalls that *Article 4, paragraph 2*, requires *full* consultation with representative organizations of employers and workers concerned or, where no such organizations exist, their representatives, in connection with the establishment, operation and modification of machinery whereby minimum wages can be fixed and adjusted. In this respect, the Committee also recalls the indications contained in paragraph 234 of its General Survey of 1992 on minimum wages, according to which, although States are free to choose the means whereby consultation is carried out, the consultation must take place before decisions are taken and must be effective, that is to say that it must enable employers' and workers' organizations to have a useful say in matters that are the subject of consultation, in this case matters relating to the adjustment of minimum wages. The Committee also recalls that the obligation to consult is distinct from negotiation.

The Committee requests the Government to indicate the consultations that were held prior to the adjustment of the minimum wage by Provisional Resolution No. 1415, with an indication of the organizations of employers and workers which were consulted and the results of these consultations. It also requests the Government to indicate the measures which have been taken or are envisaged to ensure prior and effective consultation of the organizations of employers and workers concerned in decisions relating to minimum wages in accordance with *Article 4, paragraph 2*.

Costa Rica (ratification: 1979)

The Committee notes the information supplied by the Government in reply to the comments made by the Confederation of Workers Rerum Novarum (CTRN) relating to an excessively low wage rate per hour for road transport workers.

The Committee notes the decision by the Higher Court of San Jose (No. 796 of 27.11.1990) to the effect that "in accordance with the principle of the most favourable rule and with what is laid down in section 17 of the Labour Code under which the interest of the workers must prevail in interpreting labour law, the general provisions of sections 136 and 139 of the Labour Code must be applied to transport drivers, bearing in mind that it is dangerous for a worker who transports people to be subjected to excessively tiring days which may result in exhaustion and, consequently, risk to the health and especially the safety of users of the service".

The Committee also notes with interest that, at the initiative of the Minister of Labour, after consultation with employers and workers, the Government has submitted to the Legislative Assembly a draft law repealing section 146 of the Labour Code which, in March 1996, received a favourable Opinion from the Standing Commission on Social Affairs. According to the Government, this draft law — which is based on article 58 of the Constitution and section 136 of the Labour Code setting out the limits of the working day — fixes the length of the ordinary working day. According to the Government, there is no valid reason from the legal or social point of view to subject workers in the transport sector to discriminatory treatment as compared with other categories of workers covered by section 146 of the Labour Code.

The Committee requests the Government to send it a copy of the relevant text once the draft law has been adopted.

Latvia (ratification: 1993)

The Committee notes the information supplied in the first report of the Government and the observations made by the Free Trade Union Federation of Latvia (LBAS).

The Committee notes from the observations made by the LBAS that, according to trade union experts, the state-determined minimum wage is 1.7 times less than the state-determined crisis living wage and three times less than the living wage necessary for one working person.

The Committee notes that the Government has not communicated its comments on these observations and requests it to do so. It asks the Government to provide comprehensive information on the results of the application of the minimum wage fixing machinery in accordance with *Article 5 of the Convention*.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Brazil, Cameroon, Costa Rica, Latvia*.

Convention No. 132: Holidays with Pay (Revised), 1970

Iraq (ratification: 1974)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. With reference to its previous comments, the Committee notes the Government's statement in its latest report that, in the opinion of the competent authority (the Ministry of

Finance), the Convention does not apply to officials in the public service covered by the provisions of Act No. 24 of 1960. The Committee observes that the Government has been making this statement for several years despite the Committee's comments that the Convention applies to persons employed in the public service unless the Government specifically excludes them from the scope of the Convention. It therefore must once again emphasize that, with the exception of seafarers, no employed person is excluded from the scope of the Convention (see *Article 2, paragraph 1, of the Convention*) and that the Government did not indicate in its first report that it availed itself of the possibility of excluding officials from the application of the Convention (see *Article 2, paragraphs 2 and 3*). In this connection, it must reiterate its prior requests to the Government to provide in its next report detailed information on the following points:

(a) *Article 9, paragraph 1.* The Committee notes that section 43(3) and 48(3) of Act No. 24 of 1960 permit the accumulation of up to 180 and 100 days of leave respectively for officials and employees in the public service. The Committee recalls the Government's attention to the fact that under the Convention, a part of the holiday consisting of at least two uninterrupted working weeks must be taken no later than one year, and the rest of the holiday no later than 18 months, calculated from the end of the year in which the holiday entitlement arises.

(b) *Article 11.* The Committee observes that upon termination of the employment relation following dismissal or resignation (sections 45(1) and 49 of Act No. 24 of 1960), officials apparently do not benefit either from a paid holiday in proportion to the length of service or from paid compensation. The same applies to school employees who terminate their service during the first half of the school year (section 48(10)). The Committee must recall that under this Article of the Convention, an employed person who has completed a minimum period of service should, on termination for any reason, receive a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

The Committee hopes that the Government will re-examine its position and take the necessary measures in the near future to bring Act No. 24 of 1960 into conformity with the Convention.

2. With regard to the holiday provisions of the Labour Code (Act No. 71), 1987, the Committee repeats its requests to the Government to provide detailed information on the following matters:

(a) *Article 6, paragraph 1, of the Convention.* The Committee notes that there are apparently no national laws or regulations giving effect to this provision of the Convention, under which public and customary holidays shall not be counted as part of the three weeks' annual holiday with pay prescribed in *Article 3, paragraph 3.* In this respect, the Government has indicated that, in the absence of a relevant provision in the Labour Code, section 150 of the Code provides that the provisions of other laws and of ratified Arab and international labour Conventions shall apply. The Committee wishes to call the Government's attention to the fact that, so far as the provisions of the Convention are not self-executing and, more generally, to avoid any uncertainty regarding the state of the law, the surest solution is to bring the national legislation explicitly into harmony with the provisions of the Convention.

(b) *Article 8, paragraph 2.* The Committee notes that under section 69(II) of the Labour Code, 1987, only six continuous days of leave must be taken at one time, when leave has been divided. It recalls that Article 8, paragraph 2, of the Convention provides that, when annual holiday with pay may be broken into parts, one of the parts must consist of a minimum of two uninterrupted working weeks (unless otherwise provided in an agreement between the employer and the employee).

(c) *Article 9, paragraph 1.* The Committee observes that, in the event of the deferral of a part of the holiday (under the conditions set out in section 73(III) of the Labour Code, 1987), the worker is entitled to compensation. In this respect the Committee reiterates that this provision is not in conformity with Article 9, paragraph 1, of the Convention, according to which the remainder of the holiday shall be granted and taken no later than 18 months from the end of the year in which the holiday entitlement has arisen.

The Committee requests the Government to take the necessary measures to bring the Labour Code, 1987, into conformity with the Convention on the above-mentioned points.

The Committee also trusts that the Government will supply detailed information in its next report on all legislative or regulatory action taken or contemplated to give full effect to all of the above provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Yemen.*

Convention No. 134: Prevention of Accidents (Seafarers), 1970

Costa Rica (ratification: 1979)

1. With reference to earlier comments in which it pointed out that the national legislation contains no special provisions on accident prevention for seafarers within the meaning of the Convention, the Committee notes that in its report the Government indicates that the Occupational Health Board — a body of the Ministry of Labour and Social Security — having completed the necessary formalities, an expert on health in the port sector has now begun work in Costa Rica on a plan for accident prevention in fishing vessels. The Committee recalls that the Convention applies to all persons who are employed in any capacity on board a ship, other than a ship of war, registered in a territory and ordinarily engaged in maritime navigation *(Article 1 of the Convention).*

The Committee hopes that the Government will do its utmost to adopt legislative, regulatory or other provisions in the very near future on the prevention of occupational accidents for seafarers, within the meaning of the Convention, and that they will give effect to *paragraphs 2 and 3 of Article 4 of the Convention* in respect of all seafarers. The provisions might take the form of occupational health regulations for the prevention and control of occupational risks, as was foreseen in section 283 of the Labour Code as amended by Act No. 6727 of 9 March 1982.

2. In comments it has been making for several years, the Committee has drawn the Government's attention to the need to adopt adequate measures to give effect to the following provisions of the Convention:

Article 7. (Appointment of suitable persons for the establishment of joint committees — as provided for in Decree No. 18379-TSS — to be responsible, under the Master, for accident prevention.)

Article 8. (Plans and programmes of the National Occupational Health Council in so far as they relate to the questions covered by the Convention.)

Since the Government's last report contained no information in this connection, the Committee once again expresses the hope that the Government will shortly be in a position to indicate the measures adopted to ensure the application of these provisions of the Convention, and asks it to report on any progress made in the matter.

France (ratification: 1978)

The Committee notes the information supplied by the Government in its report and, in particular, that on a seminar devoted to medical aspects of prevention of occupational accidents to seafarers.

1. Further to its previous comments concerning the application of *Article 4, paragraph 3(c), (g) and (i)* (provisions concerning the prevention of occupational accidents to seafarers caused by machinery, anchors, chains and lines, and the supply of personal protective equipment), and *Article 5* (clear indication of the obligation of shipowners and seafarers to comply with the provisions concerning the prevention of accidents) *of the Convention*, the Committee notes the provisions of a draft decree amending Decree No. 84-810 of 30 August 1984 relating to the protection of human life at sea, lodging on board ship and prevention of pollution, transmitted to the Council of State, and to a draft order amending the Order of 23 November 1987 on safety of vessels which, once they are adopted, would give effect to the provisions of the Convention in question. The Committee hopes that the texts mentioned will be adopted very soon and that the Government will supply copies once they are adopted.

2. *Articles 6, paragraph 4, and 9, paragraph 2.* The Committee reminds the Government that appropriate measures shall be taken to bring to the attention of seafarers copies or summaries relating to accident prevention measures and to bring to their attention information concerning particular hazards, for instance, by means of official notices containing relevant instructions. The Committee requests the Government to indicate the measures taken to give effect to these provisions of the Convention.

Guinea (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee has noted that no specific instrument for the prevention of occupational accidents of seafarers, giving effect to the provisions of the Convention, has been adopted, be it a statutory instrument, a code of practice or any other appropriate means.
>
> In its report for the period ending 30 June 1989, the Government had indicated that appropriate regulations were being prepared and would be reviewed with the technical assistance of the ILO to ensure their compliance with the provisions of the Convention. In its latest report the Government indicates that draft specific provisions for seafarers are still being examined by the specialized technical services and that the merchant marine has recently finalized a draft maritime code.
>
> The Committee takes due note of these indications. It trusts that the Government will do what is possible to ensure that provisions giving effect to the Convention will be adopted in the very near future and that it will supply copies thereof as soon as they have been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nigeria (ratification: 1973)

Article 2 of the Convention. In its previous comments, the Committee requested the Government to supply copies of relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in conformity with the provisions of this Article, drawing the attention of the Government to the obligation of the competent authority to ensure that, in accordance with *Article 2, paragraphs 1 and 2*, of the Convention, all occupational accidents are adequately reported, that comprehensive statistics shall not be limited to fatalities or to accidents involving the ship, and that statistics of accidents are kept and analysed. Taking into account the Government's indication that accidents on board ships had been reported only when the ship sustained structural damage or when there had been loss of life or serious injury, the Committee earlier expressed the hope that records of minor accidents kept by private and government shipping companies would be integrated into reporting procedures and statistics.

The Committee notes that no such information has been provided by the Government. It asks the Government to indicate measures taken to give effect to this Article and to supply copies or relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in accordance with the provisions of the Convention.

Article 3. In its previous comments, the Committee, taking into consideration the Government's indication that the necessary measures would be undertaken for research to be conducted into the causes and prevention of accidents aboard Nigerian ships, expressed the hope that such research would be carried out and that the Government would provide detailed information on progress made in this respect.

Since no information has been supplied on this subject in the Government's latest report, the Committee, once again, asks the Government to supply such information on any research undertaken into general trends and hazards revealed by statistics, in order to provide a sound basis for the prevention of accidents which are due to particular hazards specific to maritime work.

Articles 4 and 5. In its previous comments, the Committee requested the Government to supply information concerning provisions adopted or contemplated in order to prevent occupational accidents and covering the specific field of stage and mooring ropes *(Article 4(3)(h))* as well as the various matters listed in *Article 4(3)(a), (b), (c), (d) and (i)*. The Committee notes the Government's indication in its latest report that the Merchant Shipping (Life-saving Appliances) Rules 1967 provide for occupational accident prevention standards and deal extensively with Article 4 of the Convention. The Committee would be grateful if the Government would supply details of provisions related to the prevention of occupational accidents of seafarers which are required by virtue of the above-mentioned subparagraphs of *Article 4* and to specific obligations of shipowners and seafarers in this respect under *Article 5*.

Article 7. The Committee asked the Government to supply a copy of a statutory instrument establishing the responsibility of national surveyors and engineers, who are crew members, to conduct inspection on board ship, and duties of a safety or accident committee on board, chaired by the Master, with the Chief Engineer, the Chief Officer, the Second Engineer and the Radio Officer as members.

Since such an instrument has not been furnished with the Government's latest report, the Committee again requests the Government to supply a copy of any provisions which have been made to give effect to this Article.

Articles 8 and 9. In previous comments the Committee asked the Government to provide details concerning the tripartite establishment and implementation of programmes for the prevention of occupational accidents *(Article 8)* and the inclusion of instruction in accident prevention and health protection in the curricula of vocational training institutions for all categories and grades of seafarers *(Article 9, paragraph (1))*.

Since such information has not been supplied with the Government's latest report, the Committee again requests the Government to provide information on: (i) programmes which have been undertaken for the prevention of occupational accidents, indicating the manner in which the cooperation and participation of shipowners, seafarers, and their organizations are assured; and (ii) measures ensuring the inclusion, as part of the instruction in professional duties of all categories and grades of seafarers, of instruction in the prevention of accidents and in the protection of health in employment.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Finland, Greece, Israel, Italy, Japan, Kenya, Mexico, New Zealand, Romania, Spain, United Republic of Tanzania, Uruguay.*

Information supplied by *Denmark, Norway* and *Russian Federation* in answer to a direct request has been noted by the Committee.

Convention No. 135: Workers' Representatives, 1971

Costa Rica (ratification: 1977)

In its previous comments, the Committee had requested the Government to continue to provide information on the facilities afforded in practice to workers' representatives in public and private sector enterprises.

In this regard, the Committee notes the information supplied by the Government to the effect that various collective agreements recognize the right of members of the executive committee to hold meetings with workers on the premises of work centres and all workers are permitted to attend ordinary and extraordinary assemblies without loss of salary. Permission is given to workers who so require to attend union training, or to attend union congresses at national and international level without loss of salary. Similarly, permission is given for trade union leaders to carry out union work, without loss of salary over a considerable period of time. Furthermore, facilities, such as office space, are granted to union committees so that they can hold meetings related to their function.

Finally, the Committee notes with interest that the Minister of Labour issued official notice DM-1428-96 instructing the inspection authorities to ensure that they respect, among other things, the right of trade union leaders to make contact with plantation workers.

Jordan (ratification: 1979)

The Committee notes the information supplied by the Government in its report.

With reference to the comments it has been making for many years on the need to adopt measures to ensure the application of *Article 2 of the Convention*, the Committee notes the Government's statement that in practice some establishments grant workers' representatives full-time detachment to carry out trade union activities because certain provisions of collective agreements provide for this right of full-time detachment. The Committee notes that no *legislative* provisions or regulations appear to have been adopted to give effect to *Article 2*. The Committee must therefore ask the Government once again to take steps at the earliest possible date to enable workers' representatives to carry out their functions promptly and efficiently, in particular through laws or regulations or collective agreements (in the light of the examples set out in the Workers' Representatives Recommendation, 1971 (No. 143) such as: granting them time off to carry out their functions and attend meetings, training courses, seminars, conferences and congresses; and giving them access to all workplaces and to the management, and facilities to collect trade union dues and display notices). It asks the Government to indicate in its next report the measures taken in this respect, including the measures taken within the framework of the draft Labour Code, the drafting of which began in 1982, which it trusts will be adopted by that time. Furthermore, the Committee requests the Government to provide, along with its next report, copies of collective agreements containing provisions which grant facilities to workers' representatives in order to carry out trade union activities.

Rwanda (ratification: 1989)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 4 of the Convention.* The Committee recalls that by virtue of section 160 of the Labour Code, the Minister of Labour shall, by an order made on the advice of the Labour Advisory Board, prescribe, inter alia, the minimum number of workers above which, and the category of establishments in which, the election of staff representatives shall be compulsory; the number of representatives and their distribution among the various occupations; the procedure of elections; the conditions to be fulfilled by electors and candidates for election. Regretting that the Government confines itself to indicating in its report that a study concerning such an order is still being carried out, the Committee expresses the firm hope that the Government will be able to supply information on the results of this study in its next report and that it will forward the text of any order which is adopted under section 160 of the Labour Code.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sri Lanka (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observation, the Committee had referred to the wide-ranging restrictions contained in the Emergency Regulations No. 1 of 6 January 1990 and had considered that these Regulations, contrary to *Article 2 of the Convention*, impaired the day-to-day functioning of workers representatives in the undertaking. The Committee notes that several Emergency Regulations have been issued since its previous comments to supersede the earlier ones. The Committee trusts that any emergency restrictions on the functioning of and facilities available to workers' representatives have now been lifted and requests the Government to provide information in this respect in its next report.
>
> The Committee would recall that, in previous comments, it has drawn the Government's attention to the importance of effective protection of workers' representatives against any act prejudicial to them — including dismissal — based on their status or activities as workers' representatives and to the need to adopt measures in this regard beyond the approval and appeals procedures provided for in the Termination of Employment of Workmen (Special Provisions) Act, 1971, and the Industrial Disputes Act, 1967. In its report for the period ending 30 June 1987, the Government indicated that the legislation would be reviewed and this matter pursued as soon as the situation prevailing in the country permitted. The Committee expresses the hope that the Government is now in a position to review its legislation and to take the necessary measures to ensure the protection of workers' representatives in accordance with *Article 1* of the Convention. The Government is requested to indicate, in its next report, the progress made in this regard.
>
> The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Turkey, Yemen.*

Convention No. 137: Dock Work, 1973

France (ratification: 1977)

1. The Committee notes the information supplied by the Government and the comments of the National Association of Dock Work Industries in French Ports (UNIM). It notes in particular the adoption of Act No. 92-496 of 9 June 1992 amending Act No. 47-1746 of 6 September 1947 on the organization of dock work in sea ports, and the conclusion of the national collective agreement on dock work in 1993-94. As a result of the above reforms, most professional dockworkers who used to do casual work are now employed under a monthly scheme by cargo-handling companies on the basis of an indefinite contract. The Government also indicates that some professional dockworkers are still employed on a casual basis but that this scheme will gradually disappear since no new registration cards are being issued.

2. The UNIM considers that the Convention is obsolete in view of technological developments in the port industry and the reforms in the organization of work in the port sector. It draws attention in particular to the provisions of the French legislation which restrict both the choice by cargo-handling companies of the staff they employ and the procedure for economic terminations.

3. The Committee refers to the tripartite meeting on social and labour problems caused by structural adjustment in the port industry held in Geneva in 1996 and recalls that one of the meeting's conclusions was that the ILO must continue to promote the ratification and application of the relevant international labour standards. The Committee would be grateful if the Government would continue to provide information on the application of the provisions of the Convention, in the light of the results of the above meeting, and the comments made by the UNIM.

* * *

In addition, a request regarding certain points is being addressed directly to *Brazil*.

Convention No. 138: Minimum Age, 1973

Belgium (ratification: 1988)

The Committee notes that the Government has not provided information in reply to its general observation concerning the various measures that have been taken or are envisaged in the context of the national policy designed to ensure the effective abolition of child labour. It requests the Government to supply a full report on the application of *Article 1 of the Convention*.

Participation in activities such as artistic performances

The Committee notes, from the report submitted by the Government under Article 44 of the United Nations Convention on the Rights of the Child (CRC/C/11/Add.4-06.09.1994), the establishment of an advisory committee on child labour which includes representatives of workers and employers, as well as experts in psychology and pedagogy. It requests the Government to supply detailed information on the functions and composition of the above committee and on the results of its work.

The Committee notes with interest the Act of 5 August 1992 (which came into force on 1 February 1993), which provides for the protection of children in a sector in which they are increasingly being sought, namely publicity. It notes that, through an individual authorization from the competent Minister, work by children may be authorized in specific cases such as theatrical roles, fashion shows or participation in fashion photographic sessions. The application to obtain an individual derogation from the prohibition of child labour can only be made personally by the organizer, who must be resident in Belgium, and not by impresarios or agencies. The competent official who issues the derogation may establish a whole series of specific measures according to the activity and may interview the child.

The Committee requests the Government to supply information on the application of the Act of 5 August 1992 and the Royal Order of 11 March 1993, which gives effect, in law, to the provisions of ***Article 8 of the Convention***.

Dominica (ratification: 1983)

The Committee notes that the Government's report indicates that there has been no amendment to the national legislation on any of the points raised in the previous comments. It recalls that the Government has been asked to give effect to several provisions of the Convention since its ratification. The Committee points out in particular that the minimum age for admission to employment or work, which was specified to be 15 years when Dominica ratified the Convention, has not been ensured in the national legislation.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and supply information on any progress made on the matters that have been raised and which the Committee repeats once again in a request directly addressed to the Government.

France (ratification: 1990)

The Committee notes the comments made by the French Democratic Confederation of Labour (CFDT) on the application of the Convention and on the Government's reply to the Committee's previous comments. It notes that the Government has not commented on these observations.

The CFDT considers that, although the labour regulations respecting young workers are protective in global terms, certain occupations and activities are not covered by the general regulations or offer possibilities for derogations that are too broad:

- domestic employees are covered by Book VII of the Labour Code, which does not contain any provisions respecting minimum age, and are excluded from the provisions of Book I respecting minimum age;
- the children of farmers can work from 12 years of age under the surveillance of their parents;
- in the case of enterprises engaging in artistic performances and modelling agencies, the delivery of individual authorizations for participation in a performance, or of approvals to modelling agencies holding a licence allowing them to engage children without individual authorizations, are dependent on the affirmative opinion of the departmental councils for the protection of children. These councils are not very active, except in the Parisian region. Furthermore, these Councils, which are

composed of officials and magistrates, do not permit the consultation of organizations of employers and workers, as provided for by the Convention. The Committee recalls that these points were raised in its previous direct request, to which the Government has not replied.

The CFDT also states that the deterioration of the employment situation of adults has been accompanied by a significant increase in work by young children in undeclared activities: the distribution of publicity as a family activity, street hawking (lilies of the valley, daffodils), "service" activities (cleaning windscreens), etc.

The Committee requests the Government to supply full information on the observations made by the CFDT and on the matters raised in the request that is being addressed directly to the Government.

Minimum age in the maritime sector

The Committee notes the information supplied by the Government on the application of the Convention in the maritime sector. It notes in particular the Government's intention of revising, among other provisions, section 115 of the Maritime Labour Code, which establishes a minimum age of 15 years, in order to raise the minimum age for work on board ship to 16 years.

Recalling that the minimum age of 16 years was specified at the time of the ratification of the Convention, under the terms of *Article 2, paragraph 1, of the Convention*, the Committee requests the Government to indicate the measures which have been taken to bring its legislation into conformity with the obligations deriving from the Convention on this point.

[The Government is asked to report in detail in 1997.]

Honduras (ratification: 1980)

The Committee notes the ample information supplied in response to its general observation. It notes that reference is made to various statutory provisions from the Constitution of the Republic to decrees to the Social Security Act. As regards the draft Bills to reform the Labour Code and for the Childhood Code, the Committee is making comments in its direct request. It also notes with interest that the information supplied includes statistical data on the economically active starting from the age-group of 12-15, and also the numbers of permits granted to minors since June 1995. The Committee encourages the Government to continue to compile such data and to supply it together with further information on any measures taken or envisaged accordingly with regard to the application of the Convention.

Kenya (ratification: 1979)

With reference to its previous general observation, the Committee notes the Government's indication that it is formulating a national policy to ensure the effective abolition of child labour with the help of the International Programme on the Elimination of Child Labour (IPEC). It further notes that the proposed actions include inter alia the establishment of a national tripartite commission to advise on policy implementation, awareness raising, the provision of free and compulsory basic education. The Committee requests the Government to continue to supply information on developments in the formulation of such a national policy as well as on concrete measures taken and their effect on the application of the provisions of the Convention.

A direct request is also being addressed to the Government concerning the conformity of its legislation with the Convention.

[The Government is asked to report in detail in 1997.]

Romania (ratification: 1975)

National policy on the abolition of child labour

The Committee notes with interest the information supplied by the Government in its report to the effect that the payment of the child allowance for children of school age, established by the Act on social aid, is made by schools in order to enforce school attendance during compulsory education.

The Committee also notes the conclusion of the Committee on the Rights of the Child, that the increase in the number of children who live and work in the street is extremely worrying (CRC/C/15/Add. 16), and the explanations supplied by the Government representative to the effect that this phenomenon is confined largely to Bucharest and Constanza. The Committee asks the Government to indicate the measures that have been taken or are envisaged as part of the national policy to ensure the effective abolition of child labour in accordance with *Article 1 of the Convention.*

Minimum age for admission to employment or work

1. In its previous comments, the Committee noted the discrepancy between article 45(4) of the Constitution of 1991, under which minors under the age of 15 may not be employed as wage-earners, and section 7 of the Labour Code of 1972 which sets the minimum age for admission to wage-earning employment at 16 years. Section 45(4) of the Constitution sets the minimum age for admission to all wage-earning employment at 15 years, which is lower than the minimum of 16 years that the Government specified, in accordance with *Article 2, paragraph 1, of the Convention*, upon ratification. The Committee asked the Government to indicate the measures taken or envisaged to resolve this contradiction.

The Committee notes the Government's statement that access to wage-earning employment may be permitted, exceptionally, only for work which is suitable for young people's physical development, abilities and knowledge and only with the consent of their parents or guardians. The Committee recalls that the Convention provides for the fixing of a general minimum age for admission to employment or work, to be specified under *Article 2, paragraph 1*, and allows, exceptionally, a lower minimum age for light work in accordance with *Article 7*. The Committee asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to wage-earning employment between the ages of 15 and 16 years may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7, paragraph 1*.

2. In its previous comments, the Committee also asked the Government to indicate the measures taken or contemplated to ensure that the Convention is applied to unpaid work or employment. In the absence of a reply from the Government and recalling that the above-mentioned provisions of the Constitution and the legislation concern only wage-earning employment, the Committee asks the Government to indicate the measures taken or envisaged to establish a minimum age for admission to unpaid employment or work.

[The Government is asked to report in detail in 1998.]

Russian Federation (ratification: 1979)

The Committee notes with concern the indication in the report of the Government that the minimum age for employment was lowered to 15 years of age from the previous

16, by virtue of the federal Act No. 182-FZ of 24 November 1995. It recalls that the minimum age for admission to employment or work of 16 years was specified at the time of ratification in accordance with *Article 2(1) of the Convention*, and that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise progressively the minimum age as provided in *Articles 1 and 2(2)*. The Committee requests the Government to supply full information on the measures taken or envisaged to ensure that the engagement in employment or work of children under the age of 16 years is limited to the exceptions provided for in the Convention.

[The Government is asked to report in detail in 1997.]

Rwanda (ratification: 1981)

The Committee notes that the Government's report received in 1995 gives no further reply to previous comments. It must therefore repeat its observation on the following points:

> In the comments it has been making for several years, the Committee has noted the Government's intention to bring the national laws into conformity with the Convention. The Committee points out that the previous comments related to the following points:
>
> *Article 1 of the Convention.* The minimum age for admission to employment or work applies to employment of any kind, including work done for one's own account. The Committee has noted that the provisions of sections 24 and 125 of the Labour Code apply only to wage-earning work and that under the provisions of section 186 agricultural workers are subject to special provisions laid down in a particular Act, which has not yet been adopted. The Committee asks the Government to indicate the measures taken or contemplated to ensure that no one under the specified minimum age is admitted to employment or work in any occupation, in particular in agriculture and in occupations where one works for one's own account.
>
> *Article 3.* The Ministerial Order which is to specify the nature of work and the categories of undertakings barred to minors, for which provision is made in section 124 of the Labour Code, has not yet been adopted.
>
> *Article 7.* Under sections 24 and 125 of the Labour Code, the Minister may grant exceptions to the minimum age for admission to employment having regard to circumstances peculiar to the occupation or to the situation of the persons concerned. The Committee points out that the Convention provides for exceptions to the minimum age for admission to employment in the case of light work done by children over 13 years of age on condition that the work is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. It asks the Government to indicate the measures taken or contemplated to clarify the scope of the exceptions provided for in those two sections in the light of the provisions of Article 7 of the Convention.
>
> The Committee notes that in the third quarter of 1990 the Government requested and received the advice of the Office concerning a draft revision of the sections of the Labour Code designed in particular to give effect to the provisions of the Convention. It hopes that the draft text which takes the Office's advice into account will be quickly adopted, and asks the Government to supply a copy of the text adopted.
>
> *Article 2, paragraph 5.* The Committee draws the Government's attention to the information which the Government is required to supply under Article 2, paragraph 5(a) or (b), of the Convention and requests it to include this in its forthcoming reports.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sweden (ratification: 1990)

The Committee notes that the Government has supplied ample information in reply to its previous general observation, including information on social insurance, school system and statistical data on youth. It requests the Government to continue to supply such information to the extent that it would help the assessment of the application of the Convention in practice.

Domestic work

Further to its previous comments, the Committee notes with satisfaction that as a result of the amendment to the Work Environment Act (1977:1160) by the Act of 30 November 1995 (SFS 1995:1239), work done by employees under the age of 18 in the employer's household is covered, since 1 January 1996, by the Work Environment Act, which fixes among other things the minimum age for admission to employment. It notes that as a consequence the exclusion of domestic work in the employer's household from the application of the Convention, which the Government notified in its first report in accordance with *Article 4(2) of the Convention*, is no longer necessary.

Participation in artistic performances

The Committee also notes with satisfaction the amendment to the Ordinance of the National Board of Occupational Safety and Health on Minors at Work (AFS 1996:1), section 10, point 3. Unlike the previous general exclusion of artist performance and similar work as long as it is not hazardous and does not entail excessive strain, the employment of a child under the age of 13 years is now permitted only by an individual permission from the Labour Inspectorate, as required by *Article 8(1)* of the Convention, and on condition that the work is not hazardous and does not entail excessive physical and psychological strain on the child. It takes due note of the Government's general indication regarding consultation of the employers' and workers' organizations to the effect that, although the labour market parties are (since October 1992) no longer included in the Directorate of the National Board of Occupational Safety and Health, the regular practice is to involve them in the drafting of Ordinances and to have consultative meetings with them in finalizing the draft.

Togo (ratification: 1984)

National policy for the abolition of child labour

With reference to its general observation of 1995, the Committee notes the role played by the Ministry of Technical Education and Vocational Training with a view to matching training and employment and improving skills, and by the Ministry of Social Affairs to ensure the protection and well-being of children and young persons. It requests the Government to indicate whether coordination and consultation mechanisms have been established or are envisaged in the application of a national policy designed to ensure the effective abolition of child labour, within the meaning of *Article 1 of the Convention* and, if so, to indicate its composition and functions.

Recalling that *Article 2, paragraph 3*, provides that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling, the Committee requests the Government to indicate the measures which have been taken or are envisaged for the benefit of street children and children who are employed as domestic servants.

A request on certain other matters is being addressed directly to the Government.

Uruguay (ratification: 1977)

The Committee recalls that, at the time of ratifying this Convention, Uruguay specified under *Article 2(1) of the Convention* the minimum age of 15 years. The Government has been indicating, since its first report in 1979 and up to the latest report covering the period up to August 1996, that the minimum age was fixed at 15 years by virtue of Decree No. 852/971 of 16 December 1971.

The Committee notes however that the Government indicates, in its report (dated 2 August 1995) submitted to the United Nations Committee on the Rights of the Child, that the minimum age is 14 years according to the Code of the Child (document CRC/C/3/Add.37, paragraphs 244 and 245 of the report). It further notes that a government representative at the 13th Session of the UN Committee (September-October 1996) admitted the conflict between Uruguayan legislation on child labour, in which the minimum age was 14 years, and ILO Convention No. 138, and added that a bill currently before Parliament was designed to bring the domestic provisions into line with the international instrument (CRC/C/SR.325, paragraph 40).

The Committee urges the Government to clarify the situation, with particular reference to the legislative provisions actually in force on the matter.

[The Government is asked to report in detail in 1997.]

Zambia (ratification: 1976)

With reference to its previous general observation, the Committee notes with interest the Government's statement in the report that its policy is to proscribe child labour completely by offering compulsory primary education from grade one to nine, i.e. from the age of seven to 16. It would be grateful if the Government would supply statutory provisions concerning such compulsory schooling as well as information on the application in practice of such provisions inasmuch as it relates to the application of the Convention.

The Committee also notes with interest the 1996 report of the Committee on Women, Youth and Child Development submitted to the National Assembly. This report includes accounts of various social policies and actions taken either by the Government or by other bodies, such as the policy and measures regarding street children (paragraphs 6 and 7), the policy of the Ministry of Education aimed at ensuring access for every child to nine years of good quality education by the year 2015 (paragraph 10). The Committee also notes that a child development policy supplemented by a national programme of action for children has been formulated. It requests the Government to include in its report information on further developments in the activities of this committee and in the implementation of the above-mentioned policy and programme in so far as they have relevance to the application of the Convention, and in particular to the policy of effective abolition of child labour under *Article 1 of the Convention*.

The Committee further notes that the above committee recommended that the Government should proceed to hold consultations with a view to ratifying, among others, the Night Work of Young Persons (Industry) Convention, 1919 (No. 6). Recalling that the protection of young workers from night work would reinforce the implementation of *Article 3* of the Convention concerning the protection of children under 18 years from hazardous work, the Committee asks the Government to supply information on the developments in this regard.

A direct request concerning certain points is also being addressed to the Government.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Antigua and Barbuda, Belgium, Dominica, Equatorial Guinea, France, Honduras, Iraq, Kenya, Libyan Arab Jamahiriya, Luxembourg, Malta, Niger, Romania, Spain, Sweden, Togo, Zambia.***

Convention No. 139: Occupational Cancer, 1974

Finland (ratification: 1977)

In its previous comments the Committee requested the Government to provide information concerning the practical application of the Convention, in particular as concerns the means for ensuring accurate registration of workers exposed to carcinogenic substances. The Committee notes the information provided by the Government in its report. It also notes the comments by the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Union of Finnish Metal Workers and the Union of Construction Workers.

Article 1 of the Convention. The Committe notes that by Decision No. 838/93 the list of carcinogenic substances has been complemented. It notes however the indication in the Government's report that this list differs from that established by the International Agency for Cancer Research (IARC) which includes substances such as silica dust, wood dust, diesel exhaust gases and formaldehyde. The Committee requests the Government to indicate whether workers are exposed to these substances and agents, and to provide information on measures envisaged or adopted to take account of the latest information available inter alia from the IARC in the periodic determination to be made under this Article of the Convention.

Articles 2, 3, 5 and Part IV of the report form. The Committee takes note of government Decision No. 1182/92 on the prevention of cancer risk at work and in particular sections 19 to 21 thereof, which provide for the keeping by the employer of a list of carcinogenic agents used or present at the workplace and products containing such agents; of workers exposed and , if available, the degree of exposure; the storage of data and a special register (section 19); identification of exposure in general (section 20); and determination of annual exposure (article 21). The Committee notes that according to SAK the register does not cover all persons exposed to a notifiable degree, due to inadequate risk assessment as well as to insuffficient inspection. The Committee also notes the comments by the Finnish Metal Workers Union that workers under short-term employment and those who have been exposed earlier in some other work remain outside the follow-up. The Committee notes the Government's indication in its report that preventive effects of the register (ASA register) are difficult to measure, that cancer morbidity among those reported in the register have been followed experimentally only once, but that it is intended to repeat the follow-up in 1996-97. The Committee requests the Government to provide information on the outome of the internal follow-up as well as on the comments by SAK and the Metal Workers Union.

The Committeee notes the information provided by the government in its report that according to the register (ASA register) a total of 14,846 workers in 1,693 work departments were exposed to carcinogenic substances in 1993, 5.4 per cent less than in 1992, the most usual substances being chromic (VI) compounds, nickel and its compounds, asbestos, benzene and polycyclic aromatic hydrocarbons. The Committee also notes that in 1990-93 the Institute of Occupational Health carried out a comprehensive study during which about 3,000 new asbstos-related occupational diseases were identified; 80 to 160 cancers from exposure to asbetos were reported in 1992-94. In 1993 from 164 cancers reported as occupational diseases, 162 were caused by asbestos.

The Committee notes the comments by the Union of Construction Workers that despite the fact that the use of asbestos is prohibited the danger remains for workers engaged in demolition work of old constructions containing asbestos. While work with asbestos is subject to licence and supervision by inspection, 10 to 20 per cent of work involving asbestos is executed without due notification, the risk of occupational cancer deriving from asbestos remaining thus alarmingly high. In addition the trade union considers that methods of early diagnosis and follow-up are not always adequate and that the sick person might be left without treatment or compensation when cancer appears. The Committee also notes the comments by STTK that there have been a few cases in which the investigation of causes of a suspected cancer have been inadequate.

The Committee requests the Government to provide information on the measures taken or envisaged to reduce to the minimum compatible with safety the number of workers exposed to carcinogenic substances or agents and the duration and degree of such exposure, and to ensure that all workers exposed to carcinogenic substances or agents are provided with medical examinations during employment and thereafter. It requests the Government to provide information on the comments by the Union of Construction Workers in relation to exposure of workers to asbestos.

Guinea (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In the comments that it has been making since 1983, the Committee has noted that no specific measures have been taken since the Convention was ratified to prevent and control occupational cancer in accordance with the Convention.
>
> In 1990, the Committee noted that, during the discussion concerning the application of this Convention in the Committee on the Application of Standards in the 1989 Conference, the Government expressed its wish for technical assistance from the ILO with a view to drawing up as quickly as possible an adequate legal framework for protection against occupational cancer. The Conference Committee hoped that practical progress could be reported before its 1990 meeting. This ILO technical assistance was provided prior to the International Labour Conference in 1990. In its latest report for the period ending 15 October 1991, the Government stated that the draft text concerning occupational cancer, formulated with the technical assistance of the ILO, would be signed in the very near future in order to give full effect to the provisions of the Convention.
>
> The Committee once again hopes that the Government will make every effort to take the necessary measures in the very near future to give effect to the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Finland, Iraq, Italy.*

Convention No. 140: Paid Educational Leave, 1974

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Belgium, Brazil, Finland, Nicaragua.*

Convention No. 141: Rural Workers' Organizations, 1975

A request regarding certain points is being addressed directly to *Brazil*.

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to the following States: *Latvia, Niger, Tunisia, Turkey*.

Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

Requests regarding certain points are being addressed directly to the following States: *Cyprus, Slovenia*.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

India (ratification: 1978)

1. Further to its previous observation, the Committee has noted the information in the Government's report as to the consultations which have taken place with employers' and workers' representatives on various aspects of ILO standards and activities. It has been particularly interested to learn of the discussions in the Tripartite Committee on Conventions concerning the review of basic human rights and other Conventions: these appear to have contributed to the ratification by India of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), in September of this year. The Committee hopes the Government will continue to supply information as to consultations of this nature.

2. The Committee has noted the observations of the Standing Conference of Public Enterprises (SCOPE) — which has called for regular annual tripartite consultations — and the Centre of Indian Trade Unions (CITU), which describes the state of national tripartite consultations as unsatisfactory in relation to a range of social and economic issues, including problems arising under international labour Conventions and national labour legislation. In its reply, the Government indicates the matters falling under *Article 5 of the Convention* on which there have been recent consultations through the procedures laid down.

3. The Committee would be grateful if the Government would include in its next report full details of further consultations taking place, as well as any action under consideration in the light of the comments of the SCOPE and the CITU.

Sierra Leone (ratification: 1985)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that the Joint Consultative Committee has met several times to debate the new labour legislation. It wishes to recall that the tripartite consultations referred to in the Convention are essentially designed to promote the implementation of international labour standards and concern, in particular, the matters defined and set out in *Article 5*,

paragraph 1, of the Convention. The Committee therefore requests the Government to supply full and detailed information on any tripartite consultations held, including their frequency, on the subject of:

(a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;

(b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organization;

(c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;

(d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organization;

(e) proposals for the denunciation of ratified Conventions.

The Government is also requested to indicate the nature of any reports or recommendations made as a result of such consultations.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Barbados, Belarus, Brazil, Chile, Estonia, France, Hungary, Lithuania, Namibia, Romania, Sri Lanka, Uganda, Venezuela.*

Convention No. 145: Continuity of Employment (Seafarers), 1976

Italy (ratification: 1981)

1. The Committee notes the adoption on 24 November 1994 of collective agreements containing provisions on the continuity of employment of seafarers. It notes that these agreements continue to exclude from their scope certain categories of seafarers who have only basic qualifications. With reference to the comments it has been making on this point for several years, it notes that the Government mentions no measures either taken or envisaged to encourage continuous or regular employment for the categories which are not covered *(Article 2, paragraph 1, of the Convention)* and to ensure that these seafarers are assured minimum periods of employment, or either a minimum income or a monetary allowance *(Article 2, paragraph 2)*. The Committee will continue to follow developments in the Government's future reports.

2. The Committee notes the Government's statement that the new collective agreements cover a large number of seafarers since they allow, within certain limits, new entrants to continuous employment. It asks the Government to provide all available statistical information on the number of seafarers and, in particular, the proportion covered by the new instruments *(Part V of the report form)*.

Netherlands (ratification: 1979)

Further to its previous comments, the Committee notes the information supplied by the Government in its report. It also notes the observations made in November 1995 by the Confederation of the Netherlands Trade Union Movement (FNV) and the Government's reply to these observations.

In its comments, the FNV asserts that the policy of the Government is not aimed at promoting permanent employment for qualified seafarers, since seafarers are granted a continuous employment contract only when they are covered by a Dutch collective labour agreement, which is not the case for the majority. According to the FNV, the Government's policy results in Dutch shipowners being given more scope to take on non-Dutch seafarers under more flexible conditions.

The Government, for its part, notes that *Article 2, paragraph 1, of the Convention* establishes the obligation to encourage all concerned to provide continuous or regular employment for seafarers. The Government asserts that a shipowner is free to employ any seafarer he deems useful: where the seafarer concerned is a foreigner, recruitment takes place in accordance with the rules in force in the country of origin, and the Dutch Government has no means of intervening other than protesting. However, the Government again refers to the provisions of the Civil Code which provide that a seafarer is employed continuously unless explicitly stated otherwise, and indicates that this matter also is regulated by the Maritime Shipping Employment Agreement (RAZ) concluded by the social partners.

While noting this information, the Committee draws attention to the responsibility which the Government has in relation to all seafarers, whether Dutch or otherwise, under *Article 2, paragraphs 1 and 2*, which states that every effort shall be made for seafarers to be assured minimum periods of employment, or either a minimum income or a monetary allowance. It asks the Government to describe the measures taken or envisaged to encourage continuous employment for all seafarers and the efforts made to give effect to Article 2 with regard to seafarers not covered by the RAZ.

It also asks the Government to provide practical information on the application of the Convention, as requested under *Part V of the report form*.

[The Government is asked to report in detail in 1998.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, France, Hungary, New Zealand, Norway, Poland, Portugal*.

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

United Kingdom (ratification: 1980)

The Committee notes the Government's report for the period ending 31 May 1996, as well as the Trades Union Congress (TUC) comments of 8 November 1996 on the Government's report, and the Government's reply of 22 November 1996 to the TUC's comments. The Committee has taken into consideration, in this observation and in a request addressed directly to the Government, the comments by the TUC and the reply by the Government.

In its comments, the TUC considers that the Merchant Shipping (Hours of Work) Regulations 1995 are unclear and unenforceable. It further notes that the Government has recently published a consultation paper on the proposed implementation of the revised International Convention for the Standards of Training, Certification and Watchkeeping (STCW), and that in the draft Safe Manning and Watchkeeping Regulations, the Government has given notice that it intends to revoke the Regulations and replace them with revised guidelines.

The TUC states its position that all seafarers should enjoy ten hours' daily rest. It refers to regulations currently in force providing for a minimum of seven hours rest per 24-hour period but notes that, if for operational reasons this were not practicable, the Marine Safety Agency (MSA) has advised that the operator should ensure an aggregate 16 hours rest in a 48-hour period [as provided under Regulation 5(c)]. The TUC notes that this arrangement has often resulted in seafarers working for 48 hours — four hours on and four hours off — thus permitting employers to ensure breaks totalling 16 hours within a 48-hour period, but without the guarantee of a rest period of sufficient length to ensure proper rest and recovery.

1. Safety standards and hours of work

The Committee refers to the provisions of the Merchant Shipping (Hours of Work) Regulations 1995 (hereinafter "Regulations") which came into force on 28 February 1995.

The Committee notes, in particular, the requirement in Regulation 2(1) and (2) that every operator or employer, and every master of a ship, respectively, has a duty to ensure *so far as is reasonably practicable* [italics added] that seamen do not work more hours than is safe in relation to the safety of the ship and the seamen's performance of their duties.

The Committee notes that these Regulations form part of the statutory instruments concerning merchant shipping safety, and as such are in the purview of Article 2(a)(i) of the Convention concerning safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship.

In this regard, the Committee observes that the operative criterion with regard to hours of work throughout the Government's Regulations is that of reasonable practicability, thus qualifying the standard of safety which, as set forth in Article 2(a)(i) of the Convention, is unqualified.

The Committee recalls that the International Convention for the Standards of Certification and Watchkeeping (STCW), under section A-VIII/1 (Fitness for duty), requires that (i) all persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of ten hours of rest in any 24-hour period, and (ii) the hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length. The Committee notes that in subsection 3 of the same section of the STCW, the only permissible derogations from the required rest periods are emergencies, drills or overriding operational conditions. The Committee further refers to the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), adopted at the 84th (Maritime) Session of the International Labour Conference. This Convention adopts rest period requirements comparable to those of the STCW, subject to emergency conditions where a master may require a seafarer to perform any work necessary for the immediate safety of the ship or for the assistance of persons in distress at sea. The Committee notes that Convention No. 180 has been included in Part A of the Supplementary Appendix to the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

The Committee notes the Government's statement in its report that it would be both unreasonable and unrealistic to impose rigid hours of work requirements on shipowners, and it therefore intended that the owners and masters of individual ships should be responsible for ensuring that the hours worked comply *with their assessment of what is safe* for a particular shipping operation.

In this regard, the Committee wishes to draw the Government's attention to the obligation under Article 2 of the Convention for each Member to have laws or regulations laying down safety standards; that this obligation is incumbent on the State and cannot be delegated to individuals, including professionals, *to be dealt with according to their assessment of what is safe* on an ad hoc basis under non-emergency conditions. The Convention requires that the State assume the primary responsibility in this regard, and the Committee considers that the use of subjective and imprecise safety criteria such as reasonable practicability and normally available rest periods in order to achieve operational flexibility cannot be considered as meaningful safety standards and as fulfilling the State's responsibility under Article 2 of the Convention.

In this regard, the Committee requests the Government to indicate in what manner it considers the duty to ensure safety standards, as set forth in Regulations adopting a threshold criterion of reasonable practicability and periods of rest *normally* available, would be commensurate with the unqualified undertaking set forth in Article 2 of the Convention to have laws or regulations laying down safety standards, including standards of competency, hours of work and manning, so as to *ensure* the safety of life on board ship.

The Committee further notes from the Government's comments that it will be giving careful consideration to the new Seafarers' Hours of Work and Manning of Ships Convention in the context of overall Government policy on working time to ensure that it is justified in terms of benefit to safety and counter pollution effort and that it can be applied in a manner compatible with the implementation of the International Maritime Organization's revised Standards of Training, Certification and Watchkeeping Convention. The Government has indicated that its consideration of the Convention will include consultation with representative organizations of UK seafarers and shipowners in due course. The Committee hopes the Government will provide information concerning these tripartite consultations.

2. *Standard of duty*

The Committee further notes with some concern that under Regulation 5, in any proceedings for an offence under any of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, *it shall be for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement*. Thus, the traditional burden of proof of guilt, normally borne by the accuser, is here, in the case of disciplinary proceedings, shifted to a burden of proof of innocence, borne by the accused, and judged according to varying interpretations of what was reasonably practicable at the moment. The Committee requests the Government to communicate any comments which would shed light on this point, notwithstanding the provisions of Regulation 7(6), listed under Penalties, that it shall be a good defence for a person charged with an offence involving contravention of Regulation 4 to prove that he took all reasonable steps to avoid commission of the offence.

3. *Fitness for duty*

In this regard, the Committee recalls from the Government's report that the Regulations place an onus on every master and seaman to ensure that he is properly rested before commencing duty.

Thus, it is unclear to the Committee whether the notion of aggregate hours of rest is in practice compatible with the safety of life on board ship in general and, in particular, whether the seafarer can, under such conditions, fulfil his obligation under Regulation 3 to ensure that he is properly rested when commencing duty on a ship and that he obtains adequate rest during periods when he is off duty.

In this regard, and in the event of proceedings resulting from an offence under the Regulations, the Committee recalls the seafarer's rebuttable presumption of guilt under Regulation 5.

* * *

The Committee requests the Government to forward copies of the consultation paper on the implementation of the STCW and the draft Safe Manning and Watchkeeping Regulations as soon as possible, as well as any comments concerning the points raised in this observation.

The Committee is addressing a request directly to the Government on a number of other matters.

[The Government is asked to report in detail in 1997.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Kyrgyzstan, Russian Federation, United Kingdom, United States.*

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Kyrgyzstan, Zambia.*

Convention No. 149: Nursing Personnel, 1977

Requests regarding certain points are being addressed directly to the following States: *Ghana, Latvia, Malta, Poland.*

Convention No. 150: Labour Administration, 1978

Uruguay (ratification: 1973)

The Committee notes that the Governing Body, at its 267th Session (November 1996), adopted the report of the committee set up to examine the representation presented under article 24 of the Constitution by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and its affiliate, the National Single Trade Union in Construction and Similar Activities (SUNCA), alleging non-observance by Uruguay of the Safety Provisions (Building) Convention, 1937 (No. 62), the Labour Inspection Convention, 1947 (No. 81), the Labour Administration Convention, 1978 (No. 150) and the Occupational Safety and Health Convention, 1981 (No. 155) and the Occupational Health Services Convention, 1985 (No. 161).

In their representation, the complainant organizations claimed that private enterprises in the construction sector, which employs the largest proportion of manpower in the country, were reducing to a minimum their prevention costs relating to safety and health. The result, according to the complainants, was a major renewed outbreak of infringements of the current legislation on safety and health. The organizations concluded that this situation had arisen because of the non-existence of an efficient labour administration, capable of assuming its responsibilities in the fields of industrial accidents and occupational diseases, in particular concerning employers' respect for legislative provisions. They also considered that the labour inspection service did not have sufficient human and material resources necessary to carry out its tasks.

The conclusions of the report show that, while it is a fact that the national legislation gives effect to the Conventions, and that the Government had made efforts to improve the system of inspection and accident prevention in the construction sector, the high number of industrial accidents in this sector including a number of mortal accidents, following non-observance of the national legislation, leads to the conclusion that, in practice, the application of Convention Nos. 62, 81, 150 and 155 is not ensured. In accordance with the recommendations in the report, the Government is asked to take the measures necessary to: guarantee that the legislation on occupational safety and health in the construction sector is applied to all the workers employed in this sector; ensure observance of the standards in force regarding safety and health by all the enterprises in the sector, with particular attention being given to subcontractors; check that temporary workers receive the training necessary for them to carry out their tasks; strengthen the labour inspection system and the other administration bodies responsible for verifying observance of the safety and health standards; and guarantee that all complaints received are systematically and diligently investigated and followed up by the penalties set out in the national legislation when infringements of the safety standards are detected.

The Committee asks the Government to supply information on the measures taken to give effect to the recommendations so as to ensure the application of the Convention.

Convention No. 151: Labour Relations (Public Service), 1978

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Guyana, Turkey.*

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Brazil (ratification: 1990)

The Committee notes with interest the information supplied in the Government's report.

1. With reference to its previous comments, the Committee draws the Government's attention to the fact that there are still shortcomings in national legislation to ensure application of the Convention. The Committee notes the establishment, on the basis of various ministerial Decrees adopted in 1995, of bodies to prepare the draft dock safety and health standard, to collect suggestions on it from persons and organizations after publication, and to prepare its final version. It also notes that the draft dock safety and health standard was published in May 1995. The Committee hopes that this regulatory text will be adopted in the very near future and that it will give effect to the provisions of the Convention, in particular, *Article 4*, under which national laws shall prescribe the technical measures laid down in Part III of the Convention.

2. In its previous comments, the Committee referred to the allegations of several trade union organizations and brought to the Government's attention the need to adopt specific measures to protect the health and safety of workers in the port sector, in view of the fact that there were serious and even fatal accidents in the sector. The Committee would be grateful if the Government would inform it of the measures taken or

contemplated to ensure respect for the Convention in this matter. The Committee also requests the Government to send it a general appreciation of how the Convention is applied and to attach extracts from inspection reports and information on the number of workers covered by the legislation, the number and nature of violations reported and the measures taken as a result of them, along with the number of industrial accidents and diseases reported *(point V of the report form).*

Finland (ratification: 1981)

In connection with the comments of the Central Organization of Finnish Trade Unions (SAK), supplied with its previous report, the Government refers to sections 36 and 40 of the Council of State Decision 915/85 under which an inspection of mechanical handling appliances and their loading devices should be carried out by an expert or community of experts qualified for the task and whose qualification should be confirmed by the Ministry of Labour in accordance with a decision which is at the stage of preparation. The Government is requested to provide a copy of this decision as soon as it has been adopted.

The Committee notes the comments made by the Central Organization of Finnish Trade Unions, communicated by the Government. The SAK states that the European integration process has provoked the liberation of subcontracting in port operations increasing the number of operators in the Finnish ports. Inspections of equipment and monitoring of its conditions became more difficult due to the fact that the equipment is owned and used by persons other than those managing ports. In addition, special attention should be paid to dangerous prototype loaders and hired equipment, which are serviced and inspected by the owner, not the port keeper.

The Committee would be grateful if the Government would provide full information on any improvement made in the inspection system.

[The Government is asked to report in detail in 1998.]

Sweden (ratification: 1980)

The Committee notes the information provided in the Government's report as well as the list of rules applicable within the scope of the Convention. The Committee notes the adoption, inter alia, of the Dock Work (Amendment of Directions No. 1: Dock Work) AFS 1993:47 and of the Dock Work (Amendment of Dock Work Directions) AFS 1994:20. Since these texts have not been sent with the last Government's report, the Committee asks the Government to provide copies of these texts.

The Committee notes the comments on the application of *Articles 4, paragraph 1(b), 17 and 21 of the Convention* made by the Swedish Trade Union Confederation (LO). The LO points out that the message of the Board for Occupational Safety and Health 1976:19 which has not been valid since the end of September 1992 has not been replaced by other or new text dealing with the handling and attendance of cordage-slings and other slings, produced of natural or synthetic fibre, in spite of remarks by the Swedish Transport Workers' Union. The Government is requested to indicate measures taken to give effect to Article 21 with respect to this kind of sling.

The LO also indicates that in case of the use of a certain type of loading procedure it might occur that the means of access (ladders) are obstructed, and the dockworkers thus have to find their way into or out of the cargo space in another way, either with an ordinary ladder or with a personal basket, connected with a lifting appliance. The Government is requested to indicate the manner in which the competent authority determines the acceptability of means of access to a ship's hold or cargo deck in accordance with *paragraph 1* of Article 17.

[The Government is asked to report in detail in 1998.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Congo, Cuba, Ecuador, Egypt, Finland, France, Germany, Iraq, Mexico, Norway.*

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

Ecuador (ratification: 1988)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report and its reply to the previous comments. It notes that the National Traffic and Land Transport Council, after a first analysis of the legal and technical aspects of the implementation of the Convention, has been asked to set up an inter-institutional committee with a specific short-term mandate. A study on the matter also recommends that the ILO technical assistance should be requested.
>
> The Committee hopes that the Government will shortly be able to establish the exact attributions of each sector of the administration in order to facilitate the application of the provisions of the Convention, so that it will then be in a position to provide the information requested on the laws and regulations that give effect to the provisions of the Convention, and on its application in practice, as required by the report form.
>
> The Committee also notes a communication sent by the Ecuadorian Central of Class Organizations, which alleges that there is a lack of any machinery to supervise the application of the Convention. It hopes that the next report will also contain comments which the Government might consider appropriate to make on this matter.

The Committee notes that the possibility of the above-mentioned technical assistance has been examined by the Office and hopes it will take place in the near future.

Uruguay (ratification: 1989)

1. The Committee notes the Government's reports which were received in September and November 1995. With reference to its previous observation, it also notes the communication sent by the Inter-Union Assembly of Workers — National Convention of Workers (PIT-CNT) containing the observations made by the National Union of Transport Employees and Manual Workers (UNOTT), and the Government's reply.

2. UNOTT considers that the Government's latest report refers unjustly to the collective agreement of 9 August 1994 between the urban transport undertakings of the department of Montevideo and the organizations of workers' representatives, as well as to the governmental decrees of 17 and 23 August 1994 as implementing the provisions of the Convention. The opinion of UNOTT is that these decrees and collective agreements merely settled the dispute between the Uruguay Public Transport Company (CUTCSA) and the representative organizations mentioned above by granting vehicle crews a 30-minute break. The only two national standards which give effect to the Convention are Act No. 5350 of 17 November 1915 and the Decree of 29 October 1957. UNOTT adds that the definition of hours of work is laid down by the combination of section 4 of Act No. 5350 and sections 6, 10 and 29 of the Decree of 29 October 1957.

Taking into account all the time during which workers or employees cannot dispose freely of their time or are present at their workplace or available to an employer or a hierarchical superior during actual hours of work, these provisions are said to be more favourable to workers than *Article 4, paragraph 2, of the Convention* and should be applied as such. The result according to UNOTT is that there are no reasons for splitting the rest period, as proposed by CUTCSA and confirmed by an opinion of the General Labour Inspectorate.

3. In its reply, the Government emphasizes that there are no regulations applying the Convention as a whole and that the collective agreement of 9 August 1994, along with the Decrees of 17 and 23 August 1994, only deal with part of the matter.

4. The Committee requests the Government to indicate whether the vehicle crew, as defined in the collective agreement of 9 August and the Decrees of 17 and 23 August 1994, includes drivers. The Committee notes that the Government has not excluded urban transport from the Convention's scope pursuant to Article 2. It would recall that under *Article 5, paragraphs 3 and 4*, the competent authority or body may, after consulting with employers' and workers' organizations in accordance with *Article 3*, decide how the break may be split or exclude rest periods because drivers have sufficient breaks as a result of stops provided for in the timetable or as a result of the intermittent nature of the work.

5. Furthermore, the Committee notes the information contained in the Government's reports in reply to its previous comments. It notes in particular that section 1 of the Decree of 29 October 1957 has been repealed by Decree 611/80 of 19 November 1980 and that heads of firms and members of their families are not excluded from national legislation on hours of work. The Committee also notes that an adequate system of inspection and appropriate penalties for infringement are provided by Decree 680/977 of 6 December 1977 and Act No. 15.903 of 10 November 1987. The report describes the regular consultations of employers' and workers' organizations on the matters covered by the provisions of the Convention. The Government is requested to supply detailed information on the subject of these consultations and their results *(Article 3)*.

Finally, noting that the problem raised by UNOTT relates to the practical application of the Convention and noting that the Government's report mentions none of the many judgements cited by UNOTT, the Committee would be grateful if the Government would indicate in subsequent reports any change, progress or difficulty arising in application of the provisions of the Convention and would supply full information on any decision of the courts or other tribunals raising matters of principle on this subject *(points III and IV of the report form)*.

* * *

In addition, a request regarding certain points is being addressed directly to *Venezuela*.

Convention No. 154: Collective Bargaining, 1981

Requests regarding certain points are being addressed directly to the following States: *Argentina, Azerbaijan, Hungary, Uganda, Ukraine*.

Convention No. 155: Occupational Safety and Health, 1981

Brazil (ratification: 1992)

The Government notes the detailed information supplied by the Government. It also notes the observations transmitted by the Union of Fishermen of Angra dos Reis, the Union of Federal Public Service Workers of the State of Goiás and the Union of Chemical Industry Workers of ABC.

1. The Committee refers to the observations made by the Union of Fisherman of Angra dos Reis reporting employment accidents that have resulted in the death of fishermen.

The Government states that it is necessary to formulate an action strategy to secure the implementation of national health and safety standards in the fishing sector, establish adequate inspection structures and organize collaboration between the competent authorities and bodies in this field. In a second communication, the Government refers to the measures taken (inspection visits, tripartite meetings) to control the general situation of various groups of fishermen. These activities pointed to the lack of a register of fishermen and the insufficiency of the controls of the regular nature of their employment relationships.

The Committee recalls that the Convention applies to workers in all branches of economic activity *(Article 2, paragraph 1, of the Convention)* and that the coherent national policy on occupational safety, occupational health and the working environment provided for in *Article 4* must include a strategy for the various branches of economic activity, including fishing. The Committee hopes that the Government will be in a position to indicate in the near future all the new measures that have been taken to prevent employment accidents in fishing and requests it to supply information on the progress achieved in this respect.

2. The Committee notes, from the information provided by the Union of Federal Public Service Workers of the State of Goiás (SINDSEP-GO), dated 1 March 1996, that workers in certain laboratories of the Ministry of Agriculture of the State of Goiás are exposed to the risk of poisoning by harmful chemical substances. One person working in a laboratory died in 1994 as a result of poisoning; in June 1995, the workers called for the installation of protective equipment and their provision with personal protective equipment. According to the SINDSEP-GO, the delegation of the Ministry of Agriculture in Goiás did not respond to this demand for eight months. As a result, other workers have been poisoned during the handling of agro-chemical substances.

In reply to the observations made by the SINDSEP-GO, the Government describes: (i) a modification of the physical structure of the laboratories in question, which will require time; (ii) an inspection visit to the above laboratories, which led to the detection of irregularities and shortcomings, as well as specification of the corrective measures to be taken; and (iii) a study undertaken to examine the problem thoroughly. In another communication, the Government informed the Committee of the conclusions reached during a meeting to examine the observations of the SINDSEP-GO, to the effect that each laboratory controlled is provided with collective protective equipment and personal protective equipment and that the conditions of work are acceptable in all of these laboratories.

The Committee requests the Government to provide detailed information on the application of the Convention in the Ministry of Agriculture laboratories in the State of Goiás and in other enterprises where workers are exposed to the risk of poisoning by chemical and biological substances and agents.

3. The Committee notes the information supplied by the Union of Chemical Industry Workers of ABC on the occupational safety and health situation in the chemical unit of Cubataõ de Rhodia SA, which illegally dumps organochlorate wastes. The Committee requests the Government to comment on these observations, which were transmitted to it by the Office in May 1996.

Czech Republic (ratification: 1993)

The Committee notes the information provided by the Government in its first report. It notes the conclusions of the First Conference on Safety of Labour and Health Protection and in particular recommendations given by this Conference to the competent authorities and central bodies of the country in order to improve the situation in the field of occupational safety and health. The Committee also notes the observations received from the Czech-Moravian Chamber of Trade Unions (CMKOS).

In its comments, the CMKOS states that no constructive state policy has been worked out in the area of occupational safety and health which would ensure compliance with the Convention. The draft document on state policy in this matter was submitted by the Ministry of Labour and Social Affairs and discussed in April 1995. According to the CMKOS the said document has not defined a basic concept of the policy, the role of the State and the role of the social partners, and did not indicate measures contemplated at the national and regional levels. The CMKOS also indicates that the representatives of employers and employees were invited to consultations concerning a draft law on occupational safety and health which is now under preparation by the Ministry of Labour and Social Affairs; but the amendments they made concerning the absence of measures at the national, regional and company levels had not been taken into account. The CMKOS also states that the unions' role in representing employees in matters of occupational safety and health both at the national and company levels has been weakening.

The Committee notes these indications. In the absence of the Government's comments on the CMKOS observations, a copy of which was sent to the Government in February 1996, the Government is requested to indicate measures taken or envisaged to formulate and implement a coherent national policy (*Article 4 of the Convention*). The Committee draws the Government's attention to a possibility to ask for the ILO's technical assistance on occupational safety and health matters and, in particular, for advice and information on relevant comparative experiences regarding subjects raised in these observations.

[The Government is asked to report in detail in 1997.]

* * *

In addition, a request regarding certain points is being addressed directly to the *Czech Republic.*

Convention No. 156: Workers with Family Responsibilities, 1981

Japan (ratification: 1995)

The Committee notes the comments made in a communication received from the Tokyo Union of Community Workers which alleges that the Government has not taken sufficient steps to revise the relevant legislation and to apply the Convention. It states that, in particular, workers employed by small enterprises, unorganized workers and part-time workers are not in a situation to exercise certain rights provided under national legislation and the Convention. The Committee requests the Government to comment on the points raised in its first report on the Convention, which is due in 1997.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Ethiopia, Guatemala, Yemen.*

Convention No. 158: Termination of Employment, 1982

Brazil (ratification: 1995)

1. The Committee notes that at its 267th Session (November 1996) the Governing Body set up a tripartite committee to examine a representation alleging non-observance of this Convention by Brazil made under article 24 of the ILO Constitution by the Union of Workers of the Construction and Furniture Industries of Santos.

2. The Committee notes that observations on the application of the Convention were received from the Officers' Association of EMATER-Rio, the Stevedores' National Federation (FNE), the National Federation of Workers of Postal, Telegraphic and Similar Offices (FENTEC), the Trade Union of Water and Sewage Workers of Bahia (SINDAE), the Union of Petrochemical Industry Workers of Duque de Caxias (SINDIQUIMICA), the Trade Union of Workers of Metal, Mechanical and Electrical and Electronic Equipment Industries of the State of Espirito Santo (SINDIMETAL-es) and the National Union of Labour Inspectors (SINAIT).

3. The Committee refers to paragraph 15 of the general part of its report, in which it notes Brazil's denunciation of the Convention on 20 November 1996 with effect 12 months from that date, together with the reasons given by the Government. The Committee considers it contradictory to state at the same time that the Convention could be invoked to justify excessive and indiscriminate dismissals based on allegedly vague provisions in Article 4 as to the "operational requirements of the undertaking, establishment or service" and that it could allow broad prohibition of dismissals in a way incompatible with current economic and social reform and modernization. Article 4 requires termination to be grounded in a valid reason which may be connected either with the capacity or conduct of the worker or with operational requirements. As the concept of *operational requirements* is not defined in the Convention, it would be something to be defined in each State by the methods mentioned in Article 1. Nor can the Committee accept that the Convention is a step backwards in the process of moving towards less state intervention and more collective bargaining: Article 1 gives full scope for application by laws or regulations or by collective agreements, arbitration awards, court decisions or any other means consistent with national practice; and, as the Committee noted in its 1995 General Survey of Protection against Unjustified Dismissal, far from generating insecurity and litigation, the flexible standards laid down in the Convention can increase both the worker's protection against dismissal without a valid reason and the overall stability of labour relations: the consequences are favourable for the development of human resources, as well as for workers' legitimate interests. Given the Government's assurance that it is sensitive to the issues dealt with in the Convention, the Committee might hope that it would maintain contact with the International Labour Office, should it consider that further technical advice might be of help.

4. Since the Convention has now been denounced by Brazil, the Committee does not propose to offer any comments on the application of the Convention.

Spain (ratification: 1985)

The Committee notes the detailed and documented explanations supplied by the Government in answer to all the comments of the General Union of Workers (UGT) and particularly on the points raised in its previous observation.

Article 2, paragraphs 2 and 3, of the Convention. In the view of the UGT, the large proportion of temporary contracts of employment has the effect of depriving approximately one-third of the workers of the protection provided for by the Convention. However, in reply the Government recalls that it has not availed itself of the possibility provided by paragraph 2 of excluding temporary workers from the scope of the Convention; accordingly, they have the same guarantees as other workers. Furthermore, the Government considers that a distinction must be made between the issues of temporary employment and the guarantees to be provided under paragraph 3. As it indicated in its previous observation, the Committee will continue its examination of the issue of precarious forms of employment and the measures taken to remedy it in the framework of its examination of the application of Convention No. 122.

Article 7. The Government considers that the administrative conciliation procedure conducted before dismissal takes effect, in the presence of witnesses and outside the enterprise, affords workers a better means of defending themselves than would a mere formal interview conducted in the enterprise prior to dismissal. While noting this explanation, the Committee recalls that the guarantee laid down by this Article of the Convention must be provided to all workers in the event of dismissal for reasons related to his conduct or performance. It asks the Government to indicate in its next report whether this guarantee is indeed available to all workers and how it is ensured in practice.

Articles 13 and 14. The Committee notes that with the amendments to section 51 of the Workers' Charter, the national legislation has limited the applicability of Article 13, *paragraph 1*, and Article 14, *paragraph 1*, as envisaged under Article 13, *paragraph 2*, and Article 14, *paragraph 2*, respectively. The Committee recalls that the Convention allows the applicability of provisions as to informing workers' representatives and the competent authority and also consulting workers' representatives when contemplating economic, technological, structural or similar terminations to be limited to cases where specified numbers or percentages of workers are involved. It will continue to follow developments in this matter.

Venezuela (ratification: 1985)

The Committee notes that the Government's report has not been received. It further notes that, at its 267th Session (November 1996), the Governing Body set up a tripartite committee to examine a representation made under article 24 of the ILO Constitution by the Venezuelan Workers' Confederation (CTV), the Single Central Organization of Workers of Venezuela (CUTV), the General Confederation of Workers of Venezuela (CGT), the Confederation of Autonomous Trade Unions (CODESA) and the National Trade Union of Public Employees and Officials of the Judiciary and of the Council of the Magistracy (ONTRAT), alleging non-observance by Venezuela of this Convention. In accordance with customary practice, the Committee is suspending its comments on the application of the Convention pending the Governing Body's conclusion of its examination of the above-mentioned representation.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Australia, Cameroon, Gabon, Morocco, Yemen.*

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983

Requests regarding certain points are being addressed directly to the following States: *Guatemala, Japan, Paraguay.*

Convention No. 160: Labour Statistics, 1985

Sri Lanka (ratification: 1993)

The Committee notes the Government's first report as well as the observation earlier presented by the Ceylon Workers' Congress, which points out the non-observance of *Article 3 of the Convention* concerning the consultation with the representative organizations of employers and workers in designing or revising the concepts, definitions and methodology used as regards the statistics covered by the Convention. It notes that the Government admits in the report that there is no machinery to consult the employers' and workers' organizations for these purposes. The Committee recalls that the aim of the consultation provided by this Article is to take into account the needs of employers and workers and to ensure their cooperation, and that it leaves the choice of method of the consultation to each State, which may or may not be through a statutory machinery. It requests the Government to provide information on any measures taken or envisaged to consult employers' and workers' organizations for each of the *Articles 7, 8, 10, 12, 13 and 15.*

The Committee also requests the Government to supply information on the points raised in a request addressed directly to it.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Bolivia, Guatemala, Portugal, Russian Federation, Sri Lanka, Swaziland.*

Convention No. 162: Asbestos, 1986

Requests regarding certain points are being addressed directly to the following States: *Cameroon, Cyprus, Ecuador, Norway.*

Convention No. 163: Seafarers' Welfare, 1987

Requests regarding certain points are being addressed directly to the following States: *Denmark, Norway.*

Convention No. 164: Health Protection and Medical Care (Seafarers), 1987

A request regarding certain points is being addressed directly to *Sweden*.

Convention No. 167: Safety and Health in Construction, 1988

Requests regarding certain points are being addressed directly to the following States: *Guatemala, Iraq*.

Convention No. 168: Employment Promotion and Protection against Unemployment, 1988

Requests regarding certain points are being addressed directly to the following States: *Finland, Sweden*.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Mexico (ratification: 1990)

1. The Committee notes the Government's detailed report and the information that has been supplied in the course of the current year on the situation of the country's indigenous peoples and the action undertaken by the Government. It also notes that a national tripartite seminar was held on International Labour Standards with ILO participation, at which it was agreed that a workshop would be organized on the inspection and monitoring of labour standards which protect the living and working conditions of the indigenous peoples in rural areas. The Committee hopes that the Government will state in its next report whether such a workshop was held and, if so, that it will provide full information on its results.

2. The Committee notes with interest the nationwide process of consultation on the rights and participation of indigenous peoples, launched by the Government and involving almost 12,000 participants in 33 fora, which gave rise to some 9,000 proposals for promoting reforms of the relevant constitutional and legal framework; and the meetings with indigenous communities and peoples which involved approximately 11,000 people. The Committee would appreciate the Government supplying it with the full report of the national consultation and of any other relevant document. It also requests the Government to keep it informed of any action taken in the Congress on the draft initiative for reforms which are to be submitted to its next session. This draft initiative expresses and guarantees indigenous rights and recognizes in a wider way their traditions and customs.

3. One outcome of these consultations was the recommendation that the national legislation should be aligned with the Convention. The Committee asks the Government to keep it informed of the practical effects of the consultations and the number of proposals taken into account in the planned reforms.

4. *Article 20* (in conjunction with Article 11) (Labour). In an earlier observation the Committee referred to comments from the National Indian Institute (INI) concerning serious abuses against workers in the rural sector, most of whom are indigenous. These included allegations of recruitment by "enganche" (a form of coercive recruitment), non-

payment of wages, denial of the right to organize for indigenous workers and a near-total lack of labour inspection in these areas. The Committee notes that the Government's report gives information on a number of programmes which have begun, particularly the increase in training grants for unemployed workers to a total of 500,000 for 1996, 51 per cent of which are for the promotion of productive projects in the social and rural sectors, which has enabled indigenous groups to be incorporated. It also notes that 34 per cent of the resources of the Fund for Municipal Social Development have been allocated to the States of Chiapas, Oaxaca, Veracruz, Puebla and Guerrero, which have the highest poverty rates in the country.

5. The Committee trusts that the Government will keep it informed of the labour situation of indigenous peoples and the practical measures taken to improve it. It again recalls that one of the most important of these measures is frequent and effective labour inspection. Noting that the Government has not ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Committee encourages the Government to continue the efforts it has already made to improve the labour situation; to provide detailed information on the number and results of inspection visits carried out among rural indigenous workers referred to in its report; and to have recourse if necessary to the technical assistance of the International Labour Office.

6. In this connection, the Committee recalls that it has suggested on earlier occasions that the Government might resort to the technical assistance of the International Labour Office to reinforce the protection of the rights of indigenous workers. It also recalls that, in June 1995, the Conference Committee on the Application of Standards urged the Government to envisage such a possibility as a means of improving safeguards for the labour situation of indigenous peoples in accordance with the Convention.

7. The Committee notes that, shortly before its session, it received comments from the Frente Auténtico del Trabajo alleging violation of the Convention due to conflicts associated with the construction of a hydroelectric dam in Oaxaca. This communication has been sent to the Government for any comments it may wish to make.

8. The Committee is raising other matters in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Mexico, Paraguay*.

Convention No. 171: Night Work, 1990

A request regarding certain points is being addressed directly to the *Dominican Republic*.

Appendix I. Table of reports received on ratified Conventions as at 13 December 1996

(article 22 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under article 22 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which for a number of years had been followed in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports on ratified Conventions received; in addition, photocopies of those reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 22 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations. First reports appear in italics; all other reports appear in ordinary print.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Afghanistan	5	13, 14, 100, 105, 139	0		5
Albania	13	10, 11, 16, 29, 52, 58, 59, 77, 78, 87, 98, 100, 112	1	6	14
Algeria	0		14	13, 19, 29, 32, 62, 69, 73, 74, 87, 98, 100, 122, 138, *144*	14
Angola	3	19, 29, 100	4	69, 73, 74, 108	7
Antigua and Barbuda	5	19, 29, 81, 87, 138	0		5
Argentina	17	10, 13, 16, 19, 22, 29, 32, 33, 42, 53, 68, 73, 87, 100, 129, 139, *154*	0		17

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Armenia	0		5	*100, 111, 122, 135, 151*	5
Australia	10	10, 16, 19, 29, 58, 87, 100, 122, 123, *173*	0		10
Austria	11	10, 13, 19, 29, 33, 87, 100, 102, 122, 128, *172*	0		11
Azerbaijan	14	13, 16, 29, 32, 52, 69, 73, 87, 100, 111, 113, 122, 134, 138	0		14
Bahamas	3	10, 19, 29	0		3
Bahrain	1	29	0		1
Bangladesh	7	16, 19, 29, 32, 87, 118, 144	0		7
Barbados	1	100	11	10, 19, 29, 74, 87, 102, 115, 118, 122, 128, *147*	12
Belarus	9	16, 29, 32, 52, 87, 100, *108*, 122, 138	0		9
Belgium	19	13, 16, 19, 29, 32, 53, 62, 69, 73, 74, 82, 87, 100, 102, 113, 122, 125, 138, *148*	0		19
Belize	5	10, 16, 19, 29, 87	0		5
Benin	0		5	13, 29, 33, 87, 100	5
Bolivia	0		19	5, 14, 19, 20, 77, 81, 87, 98, 100, 102, 105, 106, 111, 118, 122, 123, 128, 129, 160	19
Bosnia and Herzegovina	0		24	8, 13, 14, 16, 19, 22, 23, 29, 32, 53, 69, 73, 74, 81, 87, 98, 100, 102, 111, 113, 122, 129, 138, 139	24
Botswana	1	19	0		1
Brazil	23	16, 19, 29, 53, 91, 97, 100, 113, 115, 118, 119, 122, 125, *126*, 133, *137*, 139, 140, *141*, *144*, 145, 152, 155	0		23
Bulgaria	13	13, 16, 19, 29, 32, 53, 62, 69, 73, 87, 100, 113, 138	0		13

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Burkina Faso	0		7	13, 19, 29, 33, 87, 100, 129	7
Burundi	0		18	11, 12, 14, 17, 19, 29, 42, 52, 62, 81, *87*, 89, 90, 94, *100*, 101, 105, *111*	18
Cambodia	3	13, 29, 122	0		3
Cameroon	0		17	10, 13, 16, 19, 29, 33, 81, 87, 94, 98, 100, 122, 123, 131, 132, 135, 162	17
Canada	8	16, 32, 69, 73, 74, 87, 100, 122	0		8
Cape Verde	4	19, 29, 100, 118	0		4
Central African Republic	0		13	10, 13, 14, 19, 29, 33, 62, 87, 98, 99, 100, 117, 118	13
Chad	6	13, 29, 33, 87, 95, 100	0		6
Chile	16	10, 13, 16, 19, 20, 32, 35, 36, 37, 38, *42*, 100, *103*, *115*, *136*, *162*	5	29, 122, 144, *156*, *159*	21
China	5	16, 22, 23, 32, 100	1	19	6
Colombia	13	10, 12, 13, 16, 19, 22, 29, 87, 100, 106, 129, *167*, *170*	0		13
Comoros	0		13	10, 11, 13, 19, 29, 33, 81, 87, 98, 100, 105, 106, 122	13
Congo	5	13, 29, 33, 87, 152	0		5
Costa Rica	10	29, 87, 95, 100, 122, 129, 134, 138, 145, *169*	3	16, 102, 113	13
Cote d'Ivoire	5	13, 19, 87, 100, 129	2	29, 33	7
Croatia	18	13, 16, 19, 22, 29, 32, 53, 69, 73, 74, 87, 100, 102, 113, 122, 129, 138, 139	0		18
Cuba	13	13, 16, 19, 29, 53, 87, 100, 113, 122, 138, 145, 150, 152	0		13

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Cyprus	1	100	13	16, 19, *23*, 29, 87, *92*, 102, 122, 123, 128, 152, 162, *171*	14
Czech Republic	0		13	10, 13, 19, 29, 87, 100, 102, 111, 122, 123, 128, 139, 167	13
Denmark	13	16, 19, 29, 53, 73, 87, 100, 102, 118, 129, 134, 139, 152	1	122	14
Djibouti	0		31	10, 11, 13, 14, 16, 19, 24, 29, 33, 44, 52, 53, 55, 69, 73, 77, 78, 81, 87, 88, 94, 95, 100, 101, 106, 115, 120, 122, 123, 124, 125	31
Dominica	9	8, 16, 19, 29, 87, 95, 100, 111, 138	0		9
Dominican Republic	6	10, 19, 29, 87, 100, *159*	0		6
Ecuador	8	29, 87, 100, 101, 113, 118, 123, 139	4	122, 128, 152, 153	12
Egypt	15	19, 29, 53, 62, 69, 73, 74, 87, 100, 118, 134, 139, 145, 150, 152	0		15
Equatorial Guinea	0		3	14, 100, 138	3
Estonia	7	10, 13, 16, 19, *87*, *98*, *144*	3	22, 23, 53	10
Ethiopia	2	14, 87	0		2
Fiji	3	19, 29, 98	0		3
Finland	22	13, 16, 19, 29, 53, 62, 73, 87, 100, 118, 122, 128, 129, 134, 138, 139, 140, 145, 152, 158, 163, *173*	0		22
France	27	13, 16, 19, 22, 27, 29, 53, 69, 73, 74, 81, 82, 88, 94, 100, 102, 113, 124, 125, 127, 129, 134, 137, 138, *139*, 145, 152	4	62, 87, 118, 122	31
Gabon	8	10, 13, 19, 29, 33, 87, 100, 123	0		8

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Germany	22	16, 19, 29, 53, 73, 87, 100, 102, 111, 113, 118, 122, 125, 128, 129, 132, 134, 138, 139, 152, *161*, *164*	0		22
Ghana	17	1, 8, 14, 22, 23, 29, 45, 87, 90, 92, 100, 105, 106, 108, 111, 115, 148	12	11, 16, 19, 50, 58, 64, 69, 74, 88, 107, 150, 151	29
Greece	15	13, 16, 19, 29, 62, 69, 73, 87, 100, 102, 122, 126, 133, 134, 138	0		15
Grenada	0		10	10, 16, 19, 29, 81, *87*, 98, *100*, 105, *144*	10
Guatemala	14	13, 16, 19, 29, 50, 87, 100, 113, 118, 122, *129*, 138, *156*, *159*	1	64	15
Guinea	5	81, 98, 105, 111, *133*	14	10, 13, 16, 29, 33, 62, 87, 100, 113, 118, 122, 134, 139, 152	19
Guinea-Bissau	0		11	7, 19, 29, 68, 69, 73, 74, 91, 92, 100, 108	11
Guyana	9	10, 19, 29, 87, 100, 129, 136, 139, 151	0		9
Haiti	4	29, 87, 100, 106	8	12, 17, 19, 45, 77, 78, 90, 107	12
Honduras	9	29, 32, 42, 62, 87, 98, 100, 122, 138	0		9
Hungary	16	10, 13, 16, 19, 29, 87, 100, 122, 123, *127*, *129*, 139, *141*, *148*, *154*, *155*	3	*88*, 145, *151*	19
Iceland	6	29, 87, 100, 111, 122, 139	1	102	7
India	9	16, 19, 29, 32, 100, 107, 118, 123, 144	0		9
Indonesia	4	19, 29, 45, 100	1	69	5
Iran, Islamic Republic of	1	111	4	19, 29, 100, 122	5
Iraq	2	81, 145	11	13, 16, 19, 29, 100, 118, 122, 132, 138, 139, 152	13

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Ireland	15	16, 19, 23, 29, 32, 53, 62, 69, 73, 74, 87, 102, 118, 122, 138	1	100	16
Israel	9	19, 29, 53, 87, 100, 102, 122, 134, 138	1	118	10
Italy	22	13, 16, 19, 29, 32, 53, 69, 73, 74, 87, 92, 98, 100, 102, 118, 122, 129, 134, 138, 139, 145, 147	0		22
Jamaica	0		8	16, 19, 29, 87, 100, 117, 122, 150	8
Japan	14	10, 16, 19, 29, 69, 73, 87, 100, 102, 122, 134, 139, 147, 159	0		14
Jordan	6	29, 100, 106, 118, 122, 123	0		6
Kenya	9	16, 19, 29, 32, 118, 129, 134, 138, 146	0		9
Korea, Republic of	3	73, 122, *142*	0		3
Kuwait	4	29, 52, 81, 87	0		4
Kyrgyzstan	1	122	15	16, 29, 32, 69, 73, 87 98, 100, 111, 113, *133*, 134, 138, 147, *160*	16
Lao People's Democratic Republic	0		2	13, 29	2
Latvia	0		18	13, 16, 19, *81*, 87, 98, 100, *111*, *122*, *129*, *132*, *135*, *144*, *151*, *154*, *155*, *158*, *160*	18
Lebanon	10	19, *58*, 73, *74*, 98, 100, 105, 111, 122, *147*	1	29	11
Lesotho	4	19, 29, 87, 98	0		4
Liberia	0		14	22, 23, 29, 53, 55, 58, 87, 98, 105, 111, 112, 113, 114, *133*	14
Libyan Arab Jamahiriya	0		15	14, 29, 52, 53, 81, 89, 100, 102, 111, 118, 121, 122, 128, 130, 138	15

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Lithuania	5	*81, 98, 105, 111, 144*	19	*11,* 14, 19, 24, *29, 47, 79, 87, 88, 90, 100, 127, 131, 135, 142, 154, 159, 171, 173*	24
Luxembourg	7	19, 53, 55, 56, 69, 73, 74	9	13, 16, 23, 29, 81, 87, 100, 102, 138	16
Madagascar	9	13, 19, 29, 33, 87, 95, 117, 122, 129	4	100, 111, 118, 123	13
Malawi	0		3	19, 100, 129	3
Malaysia	2	19, 123	1	29	3
Malaysia (Peninsular)	1	19	0		1
Malaysia (Sabah)	1	97	1	16	2
Malaysia (Sarawak)	1	19	1	16	2
Mali	6	13, 19, 29, 33, 87, 100	0		6
Malta	6	29, 62, 87, 100, 129, 149	6	13, 16, 19, 32, 73, 138	12
Mauritania	8	13, 22, 53, 62, 87, 102, 118, 122	3	19, 29, 33	11
Mauritius	9	16, 19, 29, 32, 74, 94, 97, 138, *160*	0		9
Mexico	16	13, 16, 19, 22, 29, 53, 87, 100, 102, 118, 123, 134, 152, 169, 170, *173*	0		16
Moldova, Republic of	0		1	*105*	1
Mongolia	4	87, 100, 122, 123	0		4
Morocco	0		7	13, 19, 29, 100, 122, 129, 145	7
Mozambique	1	100	0		1
Myanmar	0		6	16, 17, 19, 29, 52, 87	6
Namibia	3	*87, 98, 144*	0		3
Nepal	1	100	0		1
Netherlands	12	19, 45, 74, 87, 100, 102, 111, 118, 121, 128, 129, 145	10	13, 16, 29, 32, 62, 69, 73, 113, 122, 138	22
New Zealand	13	10, 16, 17, 29, 32, 42, 53, 69, 74, 100, 122, 134, 145	0		13

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Nicaragua	12	4, 8, 13, 29, 77, 87, 95, 100, 122, 138, 139, 140	2	16, 19	14
Niger	6	13, 29, 87, 100, 102, 138	0		6
Nigeria	10	16, 19, 29, 32, 81, 100, 123, *133*, 134, *155*	2	87, *144*	12
Norway	22	8, 13, 16, 19, 29, 53, 69, 73, 87, 100, 102, 113, 118, 122, 128, 129, 134, 138, 139, 145, 152, 162	0		22
Pakistan	7	16, 19, 29, 32, 87, 96, 118	2	*144, 159*	9
Panama	14	10, 16, 19, 22, 53, 68, 69, 73, 74, 92, 100, 113, 123, 126	7	13, 29, 32, 87, 122, 125, *159*	21
Papua New Guinea	10	2, 11, 19, 22, 29, 42, 85, 98, 105, 122	7	7, 8, 10, 12, 26, 45, 99	17
Paraguay	8	60, 81, 98, 105, 111, 123, 159, *169*	5	26, 29, 87, 100, 122	13
Peru	19	1, 10, 19, 20, 29, 53, 62, 67, 69, 73, 87, 88, 100, 102, 113, 122, 139, 152, *169*	0		19
Philippines	5	53, 87, 88, 100, 122	3	*19, 118, 157*	8
Poland	17	13, 16, 19, 22, 29, 62, 69, 73, 74, 87, 100, 113, 122, 123, 134, 138, 145	0		17
Portugal	13	19, 23, 29, 69, 73, 74, 87, 100, *102*, *115*, 122, 129, 145	0		13
Romania	11	13, 16, 29, 87, 100, 122, 129, 134, 138, 144, 168	0		11
Russian Federation	13	13, 16, 29, 32, 69, 73, 87, 100, 111, 113, 122, 134, 138	0		13
Rwanda	0		10	12, 19, 62, 87, 98, 100, 118, 123, 135, 138	10

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Saint Lucia	0		24	5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 50, 64, 65, 87, 94, 95, 97, 98, 100, 101, 105, 108, 111	24
San Marino	2	87, 100	0		2
Sao Tome and Principe	0		12	17, 18, 19, 81, *87*, 88, *98*, 100, *106*, 111, *144*, *159*	12
Saudi Arabia	3	29, 100, 123	0		3
Senegal	5	81, 98, 105, 111, 122	9	10, 13, 19, 29, 33, 87, 100, 102, 125	14
Seychelles	0		11	2, 8, 10, 11, 16, 29, 58, 87, 105, 108, *149*	11
Sierra Leone	0		17	16, 19, 22, 29, 32, 81, 87, 88, 94, 95, 98, 100, 101, 105, 111, 125, 144	17
Singapore	4	16, 19, 29, 32	0		4
Slovakia	15	10, 13, 19, 29, 34, 87, 100, 102, 122, 123, 128, 139, 155, *161*, 167	0		15
Slovenia	15	13, 16, 19, 29, 32, 53, 69, 73, 74, 87, 100, 113, 129, 138, 139	2	102, 122	17
Solomon Islands	0		14	8, 11, 12, 14, 16, 19, 26, 29, 42, 45, 81, 94, 95, 108	14
Somalia	0		11	16, 17, 19, 22, 23, 29, 45, 94, 95, 105, 111	11
South Africa	1	19	0		1
Spain	24	13, 16, 19, 24, 29, 44, 53, 62, 69, 73, 74, 87, 100, 102, 113, 122, 123, 129, 134, 138, 145, 152, 157, 158	0		24
Sri Lanka	2	100, *144*	5	10, 16, 29, *110*, 135	7
Sudan	4	19, 29, 100, 122	0		4
Suriname	7	13, 19, 29, 62, 87, 118, 122	0		7
Swaziland	6	19, 29, 87, 100, 111, 123	0		6

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Sweden	11	13, 29, 87, 100, 122, 129, 138, 139, 145, 152, 170	10	16, 19, 73, 102, 118, 121, 128, 134, 157, 164	21
Switzerland	14	16, 19, 29, 62, 87, 100, 102, 119, 123, 128, 132, 139, 162, *172*	0		14
Syrian Arab Republic	10	19, 29, 53, 87, 100, 118, 123, 125, 129, 139	0		10
Tajikistan	14	16, 29, 32, 69, 73, 87, 98, 100, 113, 122, *133*, 134, 138, *147*	1	*160*	15
Tanzania, United Republic of	2	59, 105	7	16, 19, 29, 88, 94, 134, 152	9
Tanzania (Zanzibar)	0		1	97	1
Thailand	4	19, 29, 122, 123	0		4
Togo	4	29, 87, 100, 138	1	13	5
Trinidad and Tobago	4	16, 29, 105, 125	2	19, 87	6
Tunisia	0		14	13, 16, 19, 29, 62, 73, 87, 100, 113, 114, 118, 122, 123, 142	14
Turkey	9	58, 87, 94, 98, 100, 102, 118, 122, 123	0		9
Uganda	11	11, 17, 19, 29, 81, 98, *122*, *123*, *144*, 154, 158	0		11
Ukraine	13	16, 29, 32, 69, 73, 87, 100, 113, 122, 138, *147*, *154*, *158*	0		13
United Arab Emirates	1	29	0		1
United Kingdom	12	10, 16, 19, 29, 32, 69, 74, 87, 100, 102, 122, 147	0		12
United States	2	53, 74	1	147	3
Uruguay	17	13, 16, 19, 32, 62, 73, 87, 100, 113, 115, 118, 122, 128, 129, 134, 138, 139	0		17
Uzbekistan	0		4	*47*, *52*, *103*, *122*	4
Venezuela	13	13, 19, 29, 87, 88, 100, 102, 118, 122, 128, 138, 139, 153	2	144, 158	15

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Viet Nam	1	123	0		1
Yemen	2	95, 98	15	14, 16, 19, 29, 58, 87, 94, 100, 105, 111, 122, 132, 135, 156, *159*	17
Zaire	16	11, 12, 14, 29, 81, 88, 89, 94, 95, 98, 100, 102, 117, 121, 150, 158	3	19, 62, 118	19
Zambia	6	19, 29, 100, 122, 123, 138	0		6
Zimbabwe	2	19, 100	1	129	3
Grand total	1 145		661		1 806
Other States					
Nauru	0		5	19, 27, 29, 42, 105	5
Samoa	0		2	14, 29	2

Note: The numbers in *italics* correspond to first reports due from Governments after ratification.

Appendix II. Statistical table of reports received on ratified Conventions as at 13 December 1996

(article 22 of the Constitution)

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1931-1932	447	–	–	406	90.8	423	94.6
1932-1933	522	–	–	435	83.3	453	86.7
1933-1934	601	–	–	508	84.5	544	90.5
1934-1935	630	–	–	584	92.7	620	98.4
1935-1936	662	–	–	577	87.2	604	91.2
1936-1937	702	–	–	580	82.6	634	90.3
1937-1938	748	–	–	616	82.4	635	84.9
1938-1939	766	–	–	588	76.8	–	–
1943-1944	583	–	–	251	43.1	314	53.9
1944-1945	725	–	–	351	48.4	523	72.2
1945-1946	731	–	–	370	50.6	578	79.1
1946-1947	763	–	–	581	76.1	666	87.3
1947-1948	799	–	–	521	65.2	648	81.1
1948-1949	806	134[1]	16.6	666	82.6	695	86.2
1949-1950	831	253	30.4	597	71.8	666	80.1
1950-1951	907	288	31.7	507	77.7	761	83.9
1951-1952	981	268	27.3	743	75.7	826	84.2
1952-1953	1 026	212	20.6	840	81.8	917	89.3
1953-1954	1 175	268	22.8	1 077	91.7	1 119	95.2
1954-1955	1 234	283	22.9	1 063	86.1	1 170	94.8
1955-1956	1 333	332	24.9	1 234	92.5	1 283	96.2
1956-1957	1 418	210	14.7	1 295	91.3	1 349	95.1
1957-1958	1 558	340	21.8	1 484	95.2	1 509	96.8
1958-1959	995[2]	200	20.4	864	86.8	902	90.6
1958-1960	1 100	256	23.2	838	76.1	963	87.4
1959-1961	1 362	243	18.1	1 090	80.0	1 142	83.8
1960-1962	1 309	200	15.5	1 059	80.9	1 121	85.6
1961-1963	1 624	280	17.2	1 314	80.9	1 430	88.0
1962-1964	1 495	213	14.2	1 268	84.8	1 356	90.7
1963-1965	1 700	282	16.6	1 444	84.9	1 527	89.8
1964-1966	1 562	245	16.3	1 330	85.1	1 395	89.3
1965-1967	1 883	323	17.4	1 551	84.5	1 643	89.6
1966-1968	1 647	281	17.1	1 409	85.5	1 470	89.1

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1967-1969	1 821	249	13.4	1 501	82.4	1 601	87.9
1968-1970	1 894	360	18.9	1 463	77.0	1 549	81.6
1969-1971	1 992	237	11.8	1 504	75.5	1 707	85.6
1970-1972	2 025	297	14.6	1 572	77.6	1 753	86.5
1971-1973	2 048	300	14.6	1 521	74.3	1 691	82.5
1972-1974	2 189	370	16.5	1 854	84.6	1 958	89.4
1973-1975	2 034	301	14.8	1 663	81.7	1 764	86.7
1974-1976	2 200	292	13.2	1 831	83.0	1 914	87.0
-1977	1 529[3]	215	14.0	1 120	73.2	1 328	87.0
-1978	1 701	251	14.7	1 289	75.7	1 391	81.7
-1979	1 593	234	14.7	1 270	79.8	1 376	86.4
-1980	1 581	168	10.6	1 302	82.2	1 437	90.8
-1981	1 543	127	8.1	1 210	78.4	1 340	86.7
-1982	1 695	332	19.4	1 382	81.4	1 493	88.0
-1983	1 737	236	13.5	1 388	79.9	1 558	89.6
-1984	1 669	189	11.3	1 286	77.0	1 412	84.6
-1985	1 666	189	11.3	1 312	78.7	1 471	88.2
-1986	1 752	207	11.8	1 388	79.2	1 529	87.3
-1987	1 793	171	9.5	1 408	78.4	1 542	86.0
-1988	1 636	149	9.0	1 230	75.9	1 384	84.4
-1989	1 719	196	11.4	1 256	73.0	1 409	81.9
-1990	1 958	192	9.8	1 409	71.9	1 639	83.7
-1991	2 010	271	13.4	1 411	69.9	1 544	76.8
-1992	1 824	313	17.1	1 194	65.4	1 384	75.8
-1993	1 906	471	24.7	1 233	64.6	1 473	77.2
-1994	2 290	370	16.1	1 573	68.7	1 879	82.0
-1995[4]	1 252	479	38.2	824	65.8	988	78.9
-1996[5]	1 806	362	20.5	1 145	63.3	–	–

[1] First year for which this figure is available.

[2] As a result of a decision by the Governing Body, detailed reports were requested as from 1958-59 until 1976 only on certain ratified Conventions.

[3] As a result of a decision by the Governing Body (November 1976), detailed reports were requested, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

[4] As a result of a decision by the Governing Body (November 1993), detailed reports on only five ratified Conventions were exceptionally requested in 1995.

[5] As a result of a decision by the Governing Body (November 1993), reports are now requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.

II. Observations on the application of Conventions in non-metropolitan territories

(article 22 and article 35, paragraphs 6 and 8, of the Constitution)

A. General observations

France

French Southern and Antarctic Territories

The Committee notes that the Government has supplied the reports requested in its previous observation. It also notes the decision of the Conseil d'Etat annulling as *ultra vires* the Decree of 20 March 1987 concerning the registration and operation of vessels in the French Southern and Antarctic Territories, and the adoption of Act No. 96-151 of 26 February 1996 regarding transport, which restates the basic provisions of the annulled Decree. The Committee further notes that the implementing legislation of the Act is currently being drafted, and requests the Government to forward these texts when they are adopted.

The Committee notes that under the terms of the *Provisional instruction relating to the observance of the application to foreign seafarers of the conditions of employment in force on board vessels registered in the French Southern and Antarctic Territories*, the articles of agreement for a foreign seafarer who is not resident in France can take the form of two separate and different kinds of contract for the same seafarer: (i) a contract for the provision of services concluded between the shipowner and a company, incorporated under a foreign law, to recruit the crew; and (ii) an individual contract between the shipowner and each seafarer. The Committee further notes that the magistrate's court of Saint-Denis de la Réunion is the venue for individual labour disputes between shipowners and seafarers, as well as for interpreting or voiding clauses in the contract.

In this connection, the Committee requests the Government to indicate: (i) whether the same law applies to the articles of agreement of French seafarers (or persons of assimilated status) and those of non-resident foreign seafarers, recruited under a contract for the provision of services concluded between the shipowner and a company, incorporated under a foreign law, in charge of crew recruitment; and (ii) the maritime authority empowered to examine complaints relating to maritime labour from French and foreign seafarers serving under articles of agreement on vessels registered in the French Southern and Antarctic Territories.

The Committee also notes that a first summary report on the application to foreign seafarers of the conditions of employment in force on vessels registered in the French Southern and Antarctic Territories is to be drafted and transmitted before 1 December 1996 by the Regional Directors of Maritime Affairs to the Maritime Labour and Employment Office. It requests the Government to provide a copy of the above report as soon as it is available.

Netherlands

Aruba

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia), *Netherlands* (Netherlands Antilles).

B. Individual observations

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

A request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to *Australia* (Norfolk Island), *France* (French Polynesia, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon) and *United Kingdom* (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Guernsey, Hong Kong, Isle of Man, Jersey).

Information supplied by the *United Kingdom* (St. Helena) in answer to a direct request has been noted by the Committee.

Convention No. 13: White Lead (Painting), 1921

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Information supplied by *France* (French Guyana, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon) in answer to a direct request has been noted by the Committee.

Convention No. 14: Weekly Rest (Industry), 1921

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Denmark

Faroe Islands

The Committee notes the information in the Government's report according to which the law of 15 January 1988 concerning seafarers has become applicable to the Faroe Islands by Order No. 163 of 25 August 1993, adopted by the legislative assembly of the Faroe Islands *(lagting)*. The Committee addresses a request directly to the Government in relation to the periodicity of medical examinations.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Denmark* (Faroe Islands), *United Kingdom* (Hong Kong).

Convention No. 17: Workmen's Compensation (Accidents), 1925

Netherlands

Aruba

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For a number of years the Committee has been drawing the Government's attention to the fact that the national legislation does not contain provisions giving effect to *Article 7 of the Convention,* which provides for additional compensation to the injured workman who must have the constant help of another person. In this connection the Committee notes from the Government's reports on Convention No. 121, which contain a similar provision, that this question is being studied since 1986. The Committee therefore once again asks the Government to indicate the measures taken or contemplated to bring the law and practice into conformity with Article 7 of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Saint Helena).

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

France

French Polynesia

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention.* In reply to the Committee's previous comments, the Government states that the governing council of the Social Insurance Fund issued a favourable opinion at its meeting on 26 February 1993 for the amendment of section 29 of Decree No. 57-245 of 24 February 1957, with a view to ensuring that the nationals of a member State that has ratified the Convention are granted the same benefits as French insured persons, without any condition as to residence. It adds that the draft Decision for this purpose, which was transmitted on 21 April 1993 by the labour inspection service to the Government of French Polynesia, has still to be examined by the Territorial Assembly. The Committee takes due note of this information. It hopes that the above draft text will be adopted in the near future and that the Government will not fail to provide a copy of it as soon as it is adopted.

* * *

In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Monserrat).

Convention No. 22: Seamen's Articles of Agreement, 1926

France

French Southern and Antarctic Territories

The Committee recalls that, under the Labour Code, seamen's articles of agreement are governed by special provisions contained in the Maritime Labour Code — CTM (Act of 13 December 1926). Under the general provisions of this Code, and in view of the specific nature of maritime work, any contract concluded between a shipowner or his representative and a seafarer, whose object is the performance of a service on board ship for the purpose of a voyage, is a maritime labour contract governed by the provisions of this Act.

The Committee also notes that section 4 of the CTM provides that maritime labour contracts are governed by two sets of provisions: by the CTM for the periods in which the seafarer is on board, and by the Labour Code outside these periods.

However, the Committee recalls that the contracts of seafarers employed on ships registered in the French Southern and Antarctic Territories (TAAF) are subject to the provisions of the Overseas Labour Code (CTOM), section 30 of which states that the applicable legislation is that of the place at which the contract is executed (*lex loci solutionis*). The Committee points out that the CTOM contains no maritime provisions and so does not make the distinction between the two sets of provisions applying to seafarers' contracts under section 4 of the CTM. It notes, however, that the CTOM takes precedence (section 30), and that its geographical scope extends to the antarctic territories and in part to the island of Mayotte.

With regard to the legal status of contracts of seafarers on board ships registered in the TAAF, the Committee asks the Government to state whether, as indicated in the text of the *Provisional instructions concerning observance of the application to foreign seafarers of the conditions of employment in force on board vessels registered in the French Southern and Antarctic Territories*, these contracts are indeed maritime labour contracts, or ordinary labour contracts, and to indicate in which sectors, other than the maritime sector, economic activities are conducted in the TAAF.

The Committee also notes that the magistrate's court of Saint-Denis, Réunion, has jurisdiction for individual labour disputes between shipowners and seafarers, for interpreting contracts, or annulling clauses of such contracts.

With regard to the interpretation of contracts and the applicable law (French or other), the Committee notes the Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-Going Vessels) established by the *Philippine Overseas Employment Administration* (POEA). It notes, inter alia, that section J (applicable law) states that the laws of the Philippines and international treaties ratified by the Philippines apply to all employment contracts of Filipino seamen. The Philippines has not ratified the Seamen's Articles of Agreement Convention, 1926 (No. 22). According to section I (Jurisdiction) of the above Standard Employment Contract, the POEA has original and exclusive jurisdiction over any disputes arising out of the contract.

The Committee notes from the Government's report that no individual or collective disputes concerning the application of this Convention have been registered. It requests the Government to state (i) the law which applies to the contract(s) of seafarers employed on vessels registered in the TAAF in the case of both contracts of French seafarers (or assimilated) and contracts of non-resident foreign seafarers, hired under a contract for the performance of services concluded by the shipowner and a company governed by foreign law, responsible for recruiting the crew, and (ii) the maritime authority authorized to hear complaints from French and foreign seafarers employed on such vessels.

The Committee refers to its general observation and recalls that, when a registration is transferred to the TAAF, as regards applicable labour law the contracts concluded by seafarers to work on ships previously registered in a port of metropolitan France, an overseas department or an overseas territory (other than the TAAF), are no longer governed by the CTM, but by the CTOM.

[The Government is asked to report in detail in 1997.]

Convention No. 29: Forced Labour, 1930

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Requests regarding certain points are being addressed directly to *France* (French Polynesia, New Caledonia, St. Pierre and Miquelon) and *Netherlands* (Netherlands Antilles).

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

France

French Guiana, Guadeloupe, Martinique, Réunion.

See under Convention No. 35, France.

* * *

Information supplied by *France* (French Guiana, Guadeloupe, Martinique, Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

France

French Guiana, Guadeloupe, Martinique, Réunion.

See under Convention No. 35, France.

* * *

Information supplied by *France* (French Guiana, Guadeloupe, Martinique, Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

France

French Guiana, Guadeloupe, Martinique, Réunion.

See under Convention No. 35, France.

* * *

Information supplied by *France* (French Guiana, Guadeloupe, Martinique, Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

France

French Guiana, Guadeloupe, Martinique, Réunion.

See under Convention No. 35, France.

* * *

Information supplied by *France* (French Guiana, Guadeloupe, Martinique, Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 53: Officers' Competency Certificates, 1936

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 62: Safety Provisions (Building), 1937

Requests regarding certain points are being addressed directly to *France* (Martinique, Réunion).

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to *France* (French Polynesia), *Netherlands* (Aruba, Netherlands Antilles) and *United Kingdom* (Isle of Man).

Convention No. 73: Medical Examination (Seafarers), 1946

France

French Southern and Antarctic Territories

The Committee notes the information supplied by the Government in its report.

1. Statistics of seafarers' medical examinations.

The Committee notes the statistics of the number of medical examinations carried out in metropolitan France from 1987 to 1995, attached to the Government's report on

Convention No. 16. The Committee notes that at 1 January 1995 the number of posts of officer and seafarer on board ships registered in the French Southern and Antarctic Territories (TAAF) was 1,525, 833 of which were held by French nationals. However, no statistics are provided of the number of medical examinations conducted for seafarers in the TAAF. The Government is asked to provide statistics of medical examinations conducted for French and foreign seafarers employed on ships registered in the TAAF.

2. Seafarers' physical fitness examinations.

The Committee again refers to the observations made by the French Democratic Confederation of Labour (CFDT) in 1995 and repeated in 1996, to the effect that the physical fitness examination for seafarers employed on vessels registered in the TAAF would not be conducted by a medical officer of the merchant navy and, in most cases, would not be carried out at all. The Committee asks the Government to send its observations on the above allegations.

3. Medical certificate attesting to fitness for maritime navigation.

The Committee notes the promulgation, on 10 June 1996, of Territorial Order No. 22 applying a certificate of fitness for maritime navigation to the TAAF. The Committee notes that under section 1, the Order is applicable to all seafarers applying for employment on board a ship registered in the TAAF. The Committee notes that physical fitness for navigation is a attested to (i) by a seafarers' doctor in metropolitan France; (ii) a doctor appointed by the maritime authority in overseas departments and territories, and (iii) by an approved doctor on the list of the French consular authority abroad. With regard to examinations conducted abroad, the Committee asks the Government to state the criteria for the approval of doctors authorized to conduct medical examinations for seafarers, and the means of supervising such examinations, in accordance with *Article 3 of the Convention.*

The Committee asks the Government to indicate, in accordance with the provisions of *Article 4* of the Convention, what arrangements exist for consulting organizations of shipowners and seafarers, particularly foreign seafarers, regarding the nature of the medical examination and the information to be provided in the medical certificate.

The Committee notes that the preamble of the Order of 10 June 1996 refers to the Order of 9 August 1961 establishing the age and physical fitness requirements for the registration of French seafarers in the overseas territories. Section 1 of this Order refers to the provisions of section 115 of the Maritime Labour Code (CTM). The Committee notes that in its report sent in June 1996 on the application of the Seamen's Articles of Agreement Convention (No. 22) in the TAAF, the Government states that the CTM does not apply in the TAAF and that the applicable legislation is the Overseas Labour Code (CTOM). The Committee asks the Government to elucidate this point.

The Committee asks the Government to refer also to the general observation on the TAAF.

[The Government is asked to report in detail in 1997.]

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 81: Labour Inspection, 1947

France

French Polynesia

The Committee notes that, at its 265th Session (March 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the World Federation of Trade Unions (WFTU) under article 24 of the ILO Constitution, alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81), and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82). The allegations referred to the content and application of regulations on the training, certification and safety rules (diving schedules) applying to underwater divers working on pearl farms, adopted by the authorities of French Polynesia in 1987. In its representation, the WFTU considered, in view of the number of deaths and permanent disabilities among such divers, that the regulations were inadequate and deficient. Furthermore, they were discriminatory in that they barred divers trained in Polynesia from access to employment in companies governed by the regulations of metropolitan France.

In accordance with the recommendations set out in the above report, the Government is asked to take the necessary measures to ensure that the provisions of *Articles 3, 12 and 13 of the Convention* are effectively applied in activities in which professional divers are employed, and particularly that the labour inspectorate of the territory of French Polynesia has the human, material and technical resources to carry out the necessary inspection visits, and to continue to provide labour inspectorate data on occupational accidents involving professional divers. It is also asked, in accordance with these recommendations, to provide detailed information, particularly on the adoption of the laws and regulations to which it has referred and on inspection visits to enterprises employing professional divers, the observations and reports that the visits give rise to, the nature of infringements noted and accidents that have occurred in these enterprises.

The Committee hopes that the Government will supply information on the measures taken to give effect to the recommendations.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia), *Netherlands* (Aruba, Netherlands Antilles), *United Kingdom* (Hong Kong).

Convention No. 82: Social Policy (Non-Metropolitan Territories), 1947

France

French Polynesia

The Committee notes that, at its 265th Session (March 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the World Federation of Trade Unions (WFTU) under article 24 of the ILO Constitution, alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81) and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82). The allegations concerned the content and application of regulations on the training, certification and safety prescriptions (diving schedules) that are applicable to underwater divers employed on pearl farms, which were adopted by the authorities of French

Polynesia in 1987. In its representation, the WFTU considered that, in view of the number of permanent disabilities or deaths among divers, these regulations were inadequate and deficient. In addition, they were discriminatory in that they barred divers trained in French Polynesia from access to employment in companies coming under the regulations of metropolitan France.

In accordance with the recommendations set out in the above-mentioned report, the Government is asked to take all appropriate measures to ensure that the territorial regulation, the need for whose revision has been recognized, is brought into conformity with the requirements of Convention No. 82, inter alia by eliminating provisions that can result in indirect discrimination and by aligning training strictly with the requirements of professional diving. The Government is also asked to provide, in its reports on the application of the Convention, detailed information on the adoption of the laws and regulations to which it referred during the above procedure, in order to ensure the health and safety of professional divers in the territory of French Polynesia.

[The Government is asked to report in detail in 1997.]

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

United Kingdom

Isle of Man

With reference to its previous comments, the Committee notes with satisfaction the entry into force of the Trade Unions (Amendment) Act on 17 January 1995 which amends the definition of essential services from services the disruption of which would cause substantial harm to the economic position of the community to services whose disruption would endanger the life, health or personal safety of the whole or any part of the community. It further notes with satisfaction that the Amendment Act provides that the cancellation of trade union registration by the Chief Registrar shall be stayed where an appeal is pending.

* * *

In addition, a request regarding certain points is being addressed directly to the *Netherlands* (Aruba and Netherlands Antilles).

Information supplied by the *United Kingdom* (Anguilla, Hong Kong and Isle of Man) in answer to a general direct request has been noted by the Committee.

Convention No. 94: Labour Clauses (Public Contracts), 1949

Requests regarding certain points are being addressed directly to *France* (French Guiana, French Polynesia, Martinique) and *Netherlands* (Aruba).

Convention No. 95: Protection of Wages, 1949

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 98: Right to Organise and Collective Bargaining, 1949

France

French Southern and Antarctic Territories

The Committee notes the Government's report, the information supplied by a Government representative to the Conference Committee in June 1996 and the discussion which followed. It also notes the communication by the National Federation of Seafarers' Unions (FNSM) of 10 January 1996.

The Committee notes that the comments made by the FNSM concern a Decree and an Order of 4 August 1993 on the registration of French vessels in the French Southern and Antarctic Territories (TAAF), which amend Decree No. 87-190 of 20 March 1987. According to the FNSM, these provisions were extended to almost all French vessels where the treatment of foreign seafarers from poor countries was discriminatory, in breach of ILO Conventions.

The Government representative to the Conference explained that the contentious procedure before the Council of State questioning the legality of Decree No. 87-190 of 20 March 1987 regarding the registration of vessels in the TAAF had resulted in the recision of the Decree on the grounds that the regulatory authorities had tried to enact provisions of a legislative nature which, under the French Constitution, are the prerogative of Parliament. The practical result of this decision is that the Maritime Labour Code (Act of 13 December 1926) does not apply to the TAAF although the Overseas Labour Code (Act No. 52/1322 of 15 December 1952) is still applicable to them.

Subsequent to this decision, Act No. 96-151 of 26 February 1996 was adopted by Parliament providing a legal basis to the TAAF register by instituting a system of registration of French vessels in those territories. The Government indicates in its report that regulatory texts are in the process of consultation and drafting and will be communicated to the ILO as soon as they have been promulgated. As of 1 January 1995, 99 vessels were registered with the TAAF (16 service or research vessels and 83 vessels of international trade). The number of posts of officers and seafarers on the vessels registered with the TAAF equals 1,525, 823 of which are filled by French nationals.

In addition, the Government recalls in its report that the social partners are free to enter into collective bargaining of employment conditions on board vessels registered with the TAAF and to conclude such agreements. The Government cannot be held responsible for the absence of collective agreements concerning employment conditions on vessels registered with the TAAF. On several occasions, the Government invited the social partners to prepare a collective agreement concerning recruitment of seafarers covered by the TAAF. The specific situation of seafarers normally depends on a detachment of French crews on board vessels registered with the TAAF and on the availability of foreign crews, each of the two categories being covered by their original collective agreements. In fact, in the majority of cases, the companies responsible for recruiting seafarers for the crews of TAAF vessels are bound by local collective agreements concluded with seafarers' trade unions. Accession to these agreements is sometimes a legal obligation of the State where the recruiting company has its headquarters, but nothing in the Overseas Labour Code precludes the conclusion of such agreements covering either all seconded crews or only the crews recruited directly.

Finally, the Government indicates that in March 1996 the maritime social partners held a round table conference on maritime employment which provided a constructive dialogue and is to be followed by joint thematic meetings; one of the themes will be specifically the conditions of employment in the TAAF. The Committee notes the Government's commitment to keep it informed of the outcome of this initiative.

The FNSM, for its part, stresses that, despite the recision of the Decree of 20 March 1987 by the Council of State, the Act of February 1996 legalizes discriminatory treatment on French ships.

The Committee reminds the Government once again that by ratifying the Convention it has undertaken to encourage and promote the development and use of voluntary bargaining machinery with a view to settling the employment conditions of seafarers. It requests the Government to send it a copy of the regulations relating to Act No. 96-151 of 26 February 1996. In addition, it again requests the Government to indicate in its next report whether collective agreements have been concluded on vessels registered in the TAAF and, if so, to send it the texts of any such agreements.

United Kingdom

Hong Kong

Article 1 of the Convention. With reference to its previous comments, the Committee notes with satisfaction that the level of fines for violating the provisions of sections 21B and 21C of the Employment Ordinance on protection of workers against anti-union discrimination has been increased from HK$25,000 to HK$100,000 with effect from 14 December 1995.

The Committee further notes that the Hong Kong Government has recently proposed amendments to the Employment Ordinance to enable employees dismissed on grounds of union membership or activities to make a claim for compensation to be dealt with by a tribunal where the adjudication officer would be empowered to make an award or order reinstatement of the employee, subject to the mutual agreement of the employer and employee concerned. This proposal has been endorsed by the tripartite Labour Advisory Board and the legislative process is now under way. The Committee requests the Government to continue to keep it informed of the progress made in adopting these proposals, as well as any other steps taken to improve the protection provided against acts of anti-union discrimination.

Article 2. The Committee recalls that its previous comments referred to the need to ensure effective protection of workers' organizations and employers' organizations against acts of interference by each other. It had noted the Government's indication that, since administrative measures had worked well to implement this provision, specific legislative measures had not been considered necessary. In its latest report, the Government indicates the types of administrative measures taken in the past year to ensure protection against acts of interference, including through the examination of union accounts and the carrying out of inspection and promotion visits. The Government continues to indicate that these measures have worked well to give effect to this Article of the Convention, but that it will continue to monitor the situation and ensure adequate protection to workers' and employers' organizations against acts of interference by each other. The Committee requests the Government to continue to keep it informed in future reports of any measures taken to ensure the application of this provision of the Convention.

Convention No. 100: Equal Remuneration, 1951

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon), *United Kingdom* (Gibraltar).

Information supplied by *New Zealand* (Tokelau) in answer to a direct request has been noted by the Committee.

Convention No. 101: Holidays with Pay (Agriculture), 1952

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 105: Abolition of Forced Labour, 1957

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 111: Discrimination (Employment and Occupation), 1958

France

French Southern and Antarctic Territories

1. The Committee notes the Government's report supplying a copy of the Act on transport of 26 February 1996 as well as the explanation that, following the 1995 decision of the Conseil d'Etat, the 1987 Order on the registration of vessels in these Territories is nullified. It also notes the information supplied by the Government representative to the Conference Committee in 1996, as well as the comments of the National Federation of Maritime Trade Unions (FNSM), dated 10 January 1996, and of the French Democratic Confederation of Labour (CFDT), dated 9 October 1996, which recall their previous comments concerning the non-application of certain Conventions, including Convention No. 111, to French vessels registered in these Territories. It has emerged from past discussions that the difference in salary levels was based on the origin of the seafarers on board such ships.

2. In this respect, the Committee notes that the Government recognizes the existence of different wage levels between French seafarers and those from certain other countries. The Government specifies that, on the one hand, these gaps are due to the different levels of hierarchy, contractual obligations and responsibilities and, on the other hand, that the wages integrate the standard of living in the countries where the crew reside. The Committee recalls that section 91 of the Overseas Labour Code provides for equal remuneration irrespective of, inter alia, the worker's "origin". The Committee notes also the Government's statement during the discussion in the Conference that this

drafting was very close to the wording of Convention No. 111. The Committee accordingly requests the Government to indicate whether the term "origin" is understood to refer exclusively to nationality, or whether it covers other concepts as well. Please indicate in particular the countries of residence of those seafarers who receive lower wages than French seafarers in this connection.

3. In the absence of a reply to its previous direct requests concerning how the principle of the Convention is applied to workers who are excluded from the scope of the Overseas Labour Code (in particular, permanent public servants employed in the TAAF administration), the Committee would appreciate receiving from the Government copies of any relevant legislative texts and regulations.

Convention No. 122: Employment Policy, 1964

United Kingdom

Hong Kong

The Committee notes the Government's report which, as usual, contains comprehensive and detailed information. The Committee notes that there was a slowing down of the growth of employment during the period in question, whilst unemployment rose to a rate of 3.5 per cent at the end of 1995. The Government indicates that having unfilled job vacancies and growing unemployment at the same time shows there is still a mismatch between supply and demand in job skills. The Committee notes that vocational training and the selective management of immigration are the two main instruments for intervening in the labour market. It notes in particular that vocational retraining has been stepped up — with the participation of the tripartite Employees' Retraining Board — and that a study is being conducted of the effectiveness of the employees' retraining schemes. The Committee would be grateful if, in its next report, the Government would provide the results of this review, and describe the effects of these schemes on the promotion of full, productive and freely chosen employment within the meaning of *Article 1 of the Convention*. More generally, with reference to *Article 2* of the Convention, it asks the Government to indicate any new measures taken within the framework of a coordinated economic and social policy in order to combat the growth in unemployment. Please continue also to supply information concerning the consultations held in accordance with *Article 3* of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to *Denmark* (Greenland), *France* (French Polynesia, St. Pierre and Miquelon) and *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 123: Minimum Age (Underground Work), 1965

Information supplied by *France* (New Caledonia) in answer to a direct request has been noted by the Committee.

Convention No. 129: Labour Inspection (Agriculture), 1969

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia) and *Netherlands* (Aruba).

Convention No. 131: Minimum Wage Fixing, 1970

France

Guadeloupe

The Committee refers to the comments made previously by the General Confederation of Labour-"Force Ouvrière" (CGT-FO) on the application of the Convention in Guadeloupe, to the effect that it would be fair if the minimum wage (SMIC) applicable in Guadeloupe were the same as that in metropolitan France.

The Committee notes with interest that the SMIC in Guadeloupe has been aligned with the SMIC in metropolitan France. It asks the Government to continue to provide information on the SMIC applied in this Department, in accordance with *Article 5 of the Convention* and *point V of the report form.*

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe) and *Netherlands* (Aruba).

Convention No. 134: Prevention of Accidents (Seafarers), 1970

France

French Southern and Antarctic Territories

The Committee notes the information supplied in the Government's first reports.

The Committee notes the observation of the French Democratic Federation of Labour (CFDT), communicated by the Government in October 1996, to the effect that national legislation does not comply with a number of the provisions of international labour Conventions, including Convention No. 134. It notes that this observation does not indicate precisely the provisions which are not in conformity with the Convention.

The Committee notes the Government's statement to the effect that since Act No. 83-581 of 5 July 1983 relating to the protection of human life at sea, lodging on board ship and the prevention of pollution applies to all vessels registered in the French Republic, which includes the French Southern and Antarctic Territories (TAAF), there is therefore no difference in treatment between vessels registered in metropolitan France, in an overseas department, in the territorial community of Saint Pierre and Miquelon, in an overseas territory or in the French Southern and Antarctic Territories in regard to the application of this instrument and the regulations based on it. It requests the Government to refer to its general observation.

The Committee requests the Government to provide detailed information indicating the manner in which the Convention is applied to seafarers engaged on vessels registered in the TAAF, indicating in particular the measures taken to ensure that:

- all occupational accidents to seafarers are reported, comprehensive statistics of such accidents are kept and analysed, and accidents resulting in loss of life or serious personal injury are investigated *(Article 2 of the Convention)*;

- research is undertaken into general trends in occupational accidents to seafarers and the particular hazards of maritime employment *(Article 3)*;
- provisions concerning the prevention of accidents to seafarers are laid down by laws or other means containing references to any general provisions applicable to the work of seafarers and, in particular, to the structural features of ships, machinery, special safety measures on and below deck, loading and unloading equipment, fire prevention, anchors, chains and lines, dangerous cargo and ballast, and personal protective equipment (*Article 4)*;
- the provisions concerning the prevention of occupational accidents to seafarers specify clearly the obligation on shipowners, seafarers and others concerned to comply with them (*Article 5)*;
- the proper application of measures to prevent accidents to seafarers is ensured by means of adequate inspection or otherwise and copies or summaries of the relevant provisions are brought to the attention of seafarers *(Article 6)*;
- provision shall be made for the appointment of a suitable person or suitable persons or of a suitable committee responsible, under the Master, for accident prevention *(Article 7)*;
- programmes for the prevention of occupational accidents to seafarers are established and implemented with the participation of shipowners, seafarers or their representatives, and joint accident prevention committees or ad hoc working parties are established *(Article 8)*;
- the necessary instructions concerning particular hazards of maritime employment are brought to the attention of all seafarers *(Article 9)*.

[The Government is asked to report in detail in 1998.]

Convention No. 137: Dock Work, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 138: Minimum Age, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Netherlands

Aruba

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

Article 5 of the Convention. The Committee notes from the brief information supplied by the Government that it has not yet been possible to implement any of the tripartite consultation procedures due to the current reorganization of the Department of Labour. It hopes that the Government will be in a position in the near future to hold the consultations provided for by the Convention on all the points mentioned in paragraph 1 and that the next report will reflect such progress. It also recalls that, in accordance with paragraph 2 of this Article, the consultations shall be undertaken at appropriate intervals, "but at least once a year".

Articles 4 and 6. The Committee also notes the Government's statement that it assumes responsibility as the competent authority for the administrative support of the procedures provided for in Article 4. It would be grateful if the Government would supply in due course the information required on the appropriate arrangements for the financing of any necessary training of participants (paragraph 2), and on the preparation of an annual report on the working of the procedures.

* * *

In addition a request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 145: Continuity of Employment (Seafarers), 1976

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon) and *Netherlands* (Aruba).

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 149: Nursing Personnel, 1977

France

Guadeloupe

With reference to its previous comments, the Committee notes with regret that for many years the Government has not supplied a report on application of the Convention. In its last communication, it indicated that matters pertaining to nursing personnel did not fall within the competence of the Departmental Directorate of Labour, Employment and Occupational Training of Basse-Terre.

The Committee recalls the obligation devolving on member States, pursuant to *article 22 of the ILO Constitution*, to present periodically a report on application of ratified Conventions, in accordance with the report form approved by the Governing Body. It hopes that in future the Government will not fail to meet its constitutional obligation to provide the report due on application of the present Convention.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Guiana, French Polynesia, St. Pierre and Miquelon).

Appendix. Table of reports received on ratified Conventions (non-metropolitan territories) as at 13 December 1996
(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which for a number of years had been followed in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports on ratified Conventions received; in addition, photocopies of those reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations. First reports appear in italics; all other reports appear in ordinary print.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Australia					
Norfolk Island	3	10, 87, 122	1	29	4
Total	3		1		4
Denmark					
Faeroe Islands	4	16, 19, 29, 53	1	87	5
Greenland	5	16, 19, 29, 87, 122	0		5
Total	9		1		10

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
France					
French Guiana	30	10, 13, 16, 19, 29, 32, 53, 55, 58, 62, 69, 73, 74, 81, 87, 89, 94, 100, 105, 112, 113, 120, 123, 124, 125, 129, 136, 144, 145, 149	0		30
French Polynesia	0		18	10, 13, 16, 19, 29, 33, 44, 53, 69, 73, 87, 100, 122, 123, 125, 129, 144, 145	18
French Southern and Antarctic Territories	20	8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 98, 108, 111, 133, 134, 146, 147	0		20
Guadeloupe	31	10, 13, 16, 19, 29, 32, 53, 55, 58, 62, 69, 73, 74, 81, 87, 89, 94, 100, 105, 112, 113, 120, 123, 124, 125, 129, 131, 136, 144, 145, 149	0		31
Martinique	19	13, 16, 32, 53, 55, 58, 69, 73, 74, 81, 89, 94, 100, 113, 120, 124, 125, 129, 145	9	10, 19, 29, 62, 87, 112, 123, 136, 149	28
New Caledonia	16	10, 13, 16, 19, 29, 33, 53, 69, 73, 87, 100, 122, 123, 125, 129, 145	0		16
Reunion	20	13, 16, 32, 53, 55, 58, 69, 73, 74, 81, 89, 100, 105, 113, 120, 124, 125, 129, 136, 145	10	10, 19, 29, 62, 87, 94, 112, 123, 144, 149	30
St. Pierre and Miquelon	26	13, 16, 44, 53, 55, 56, 58, 69, 71, 73, 77, 78, 81, 82, 88, 89, 94, 96, 100, 105, 120, 124, 125, 129, 145, 149	8	10, 19, 29, 33, 87, 122, 123, 144	34
Total	162		45		207
Netherlands					
Aruba	0		29	8, 11, 14, 17, 22, 23, 25, 29, 69, 74, 81, 87, 94, 95, 101, 105, 106, 113, 118, 122, 126, 129, 131, 137, 138, 141, 144, 145, 146	29

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Netherlands Antilles	0		9	10, 29, 33, 69, 74, 87, 106, 118, 122	9
Total	0		38		38
New Zealand					
Tokelau	2	29, 100	0		2
Total	2		0		2
United Kingdom					
Anguilla	3	19, 29, 87	0		3
Bermuda	5	10, 16, 19, 29, 87	0		5
British Virgin Islands	4	10, 19, 29, 87	0		4
Falkland Islands (Malvinas)	5	10, 19, 29, 32, 87	0		5
Gibraltar	5	16, 19, 29, 87, 100	0		5
Guernsey	9	10, 16, 19, 29, 32, 69, 74, 87, 122	0		9
Hong Kong	11	10, 16, 19, 29, 32, 74, 87, 98, 101, 122, 151	0		11
Isle of Man	10	10, 16, 19, 29, 32, 69, 74, 87, 102, 122	0		10
Jersey	8	10, 16, 19, 29, 32, 69, 74, 87	0		8
Montserrat	4	16, 19, 29, 87	0		4
St. Helena	6	10, 16, 17, 19, 29, 87	0		6
Total	70		0		70
United States					
American Samoa	1	53	0		1
Guam	2	53, 74	0		2
Puerto Rico	2	53, 74	0		2
United States Virgin Islands	2	53, 74	0		2
Total	7		0		7
Grand total	253		85		338

III. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference

(article 19 of the Constitution)

Afghanistan

The Committee notes that the Government has not replied to its previous observations. It hopes that the Government will shortly provide the information required under the Memorandum adopted by the Governing Body (points I, II and III of the questionnaire), concerning the Conventions and Recommendations adopted at the 71st, 72nd, 74th, 75th and 76th Sessions of the Conference, which have already been submitted to the governmental bodies concerned. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions have been submitted.

Albania

The Committee notes that the Government has not replied to its previous observation. The Committee hopes that the Government will soon indicate that the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Algeria

With reference to its previous observation, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 74th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the International Labour Conference have been submitted to the competent authorities.

Antigua and Barbuda

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that it will soon indicate that the instruments adopted at the 68th Session of the Conference, which were submitted to the Cabinet, have also been submitted, in accordance with article 19(5)(b) and (6)(b) of the Constitution of the ILO, to the authorities which are empowered to legislate. The Committee trusts that the Government will submit the above instruments to the legislative body, as well as the instruments adopted at the 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference. The Committee recalls that the obligation to submit does not imply that governments must propose the ratification of the Conventions or the acceptance of the Recommendations under consideration. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities.

Armenia

In the absence of a reply to its previous direct requests, the Committee hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Azerbaijan

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the National Assembly. The Committee hopes that the Government will soon indicate that Recommendation No. 180 (79th Session) has been submitted to the National Assembly.

Bahamas

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. It hopes that, in respect of the instruments adopted at the 74th, 75th and 76th Sessions, which have already been submitted to the Cabinet, the Government will provide soon the information requested under point II(a) and (b) of the questionnaire at the end of the Memorandum adopted by the Governing Body. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

It should be noted that, even if the Cabinet generally takes the initiative with regard to legislation in the Bahamas as the Government points out in its report, it is necessary for all Conventions and Recommendations to be submitted to Parliament so that it can take legislative decisions and also so that the second objective of submission is achieved, which is to inform and mobilize public opinion. This does not imply that the Government is obliged to propose the ratification of a Convention or the acceptance of a Recommendation. The Committee therefore hopes that the Government will submit all the instruments adopted by the Conference not only to the Cabinet, but also to Parliament, and that it will state that it has done so in its report.

Bahrain

With reference to its previous direct request, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Belgium

With reference to previous comments, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 80th Session of the Conference have been submitted to Parliament. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 76th, 78th, 79th, 81st and 82nd Sessions of the Conference have been submitted.

Belize

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will shortly indicate that the instruments adopted from the 77th to the 79th Sessions of the Conference have been submitted to the National Assembly, which is empowered to legislate by virtue of articles 62 and 69 of the Constitution, and that it will supply, in this connection, the information and documents requested in the Memorandum adopted by the Governing Body. The

Committee would also be grateful if the Government would indicate whether the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted.

Brazil

The Committee notes with regret that once again this year the Government has not replied to the observations that it has been making since 1993 in which it noted that some instruments (Conventions Nos. 128 to 130, 149 to 151, 156 and 157) would be examined shortly by tripartite commissions with a view to their submission to Congress. The Committee therefore trusts that the Government will submit the above instruments to Congress, as well as the instruments adopted at the 52nd, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference.

Bulgaria

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly supply information on the instruments adopted at the 79th, 80th and 81st Sessions of the Conference, of which the National Assembly has taken note. It hopes that the Government will indicate whether the above-mentioned instruments have been submitted to the competent authorities and that it will shortly supply the information requested in the Memorandum adopted by the Governing Body (point II(a) and (b) of the questionnaire). In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session have been submitted.

Cambodia

With reference to its previous observation, the Committee notes the information supplied by the Government concerning the reasons for the delay in submission to the competent authorities of the instruments adopted by the Conference. It hopes that the Government will soon supply information concerning submission to the competent authorities of the instruments adopted by the Conference.

Cameroon

With reference to its previous observation, the Committee notes the information supplied by the Government during the 1996 International Labour Conference concerning the reasons for the delay in submission of the instruments adopted by the Conference. It hopes that it will indicate soon that the instruments adopted at the 69th, 70th, 71st, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Central African Republic

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly indicate that the instruments adopted at the 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities and that it will supply, for these instruments and for those adopted at the 65th, 69th, 70th, 71st, 72nd and 74th Sessions, which have already been submitted, the information and documents requested in the

Memorandum adopted by the Governing Body (points I, II and III of the questionnaire). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Chad

Further to its previous observation, the Committee notes with interest the information supplied by the Government to the effect that the instruments adopted at the 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities. The Committee hopes that the Government will shortly be able to indicate that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted.

Chile

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly indicate that the instruments adopted at the 75th Session have been submitted to the competent authorities. It would also be grateful if the Government would indicate whether the instruments adopted at the 78th Session, which are awaiting a decision by the Government, have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th, 80th, 81st and 82nd Sessions have been submitted.

Comoros

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly indicate that the instruments adopted at the 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Congo

With reference to its previous observation, the Committee notes the information supplied by the Government during the 1996 International Labour Conference concerning the reasons for the delay in submission of the instruments adopted by the Conference. It also notes that, with a view to overcoming these difficulties and regularizing the situation, technical assistance has been officially requested from the Office and granted. The Committee trusts that the Government will indicate in the near future that the instruments adopted at the 60th, 61st, 62nd, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference and the remaining instruments from the 54th, 55th, 58th, 63rd and 67th Sessions (Conventions Nos. 137, 148 and 156 and Recommendations Nos. 135 to 142, 145, 156, 163, 164 and 165) have been submitted to the competent authorities.

Costa Rica

The Committee notes the information supplied by the Government to the effect that Convention No. 176 (82nd Session) has been submitted to the Legislative Assembly. With reference to its previous observation, the Committee also notes that the instruments adopted at the 75th Session (Convention No. 167), 78th Session (Recommendation No. 179), 79th Session (Recommendation No. 180), 80th Session, 81st Session

(Recommendation No. 182) and 82nd (Protocol of 1995 to Convention No. 81 and Recommendation No. 183) Sessions of the Conference have been submitted to the Higher Labour Council. The Committee would be grateful if the Government would indicate whether these instruments have been submitted to the competent authorities.

Djibouti

The Committee notes with regret that, once again this year, the Government has not replied to the observations it has been making since 1989. It trusts that the Government will indicate soon that the instruments adopted at the 66th, 68th, 69th, 70th, 74th, 75th, 76th and 77th Sessions of the Conference have been submitted to the competent authorities and that it will provide, both for these instruments and for those adopted at the 71st and 72nd Sessions, the information and documents requested in the Memorandum adopted by the Governing Body. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted.

Ecuador

With reference to its previous observations, the Committee notes the information supplied by the Government in its report to the effect that the instruments adopted at the 74th Session, 75th Session (Recommendations Nos. 175 and 176), 77th Session (Recommendations Nos. 177 and 178), 78th Session (Recommendation No. 179), 79th Session (Recommendation No. 180), 80th Session (Recommendation No. 181), 81st Session (Recommendation No. 182) and 82nd Session (Recommendation No. 183) have been submitted to Congress. The Committee trusts that the Government will indicate in the near future that the instruments adopted at the 75th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to Congress. The Committee recalls that submission is an obligation which applies to both Conventions and Recommendations. This does not imply that the Government is obliged to propose ratification of the Conventions or acceptance of the Recommendations in question. Governments have full freedom as to the nature of the proposals they make concerning the Conventions and Recommendations which are submitted to the competent authorities.

El Salvador

With reference to its previous comments, the Committee notes with satisfaction the information supplied by the Government in its report to the effect that the instruments adopted at the 71st (Convention No. 161 and Recommendation No. 171), 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Equatorial Guinea

The Committee notes that the Government has not replied to its previous direct requests. The Committee hopes that the Government will shortly indicate that the instruments adopted at the 80th, 81st, and 82nd Sessions of the Conference have been submitted to the competent authorities.

Ghana

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Guatemala

Further to its earlier observation, the Committee notes the information supplied by the Government on submission to the competent authorities of certain instruments adopted by the International Labour Conference. It hopes that the Government will indicate soon that the instruments adopted at the 74th Session (Maritime), the remaining instruments adopted at the 75th Session of the Conference (Convention No. 168 and Recommendation No. 176), and the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. In this respect, the Committee wishes to recall that the obligation to submit the instruments adopted by the Conference to the competent authorities, as provided in the ILO Constitution, applies to all Conventions and Recommendations without exception. Governments have full freedom as to the nature of the proposals they make concerning the Conventions and Recommendations which are submitted to the competent authorities. The Committee therefore hopes that the Government will be able to indicate soon that the instruments in question have been submitted to Congress.

Guinea

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will provide soon, in respect of the instruments adopted from the 68th to the 75th Sessions of the Conference, which have been submitted to the competent authorities, the information requested in the Memorandum adopted by the Governing Body (points II(b) and III of the questionnaire). In addition, it would be grateful if the Government would indicate whether the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted.

Guyana

With reference to its previous observations, the Committee notes with interest the information supplied by the Government in its report to the effect that the instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to Parliament. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted.

Haiti

With reference to its previous observation, the Committee notes the information communicated by the Government in its report. The Committee hopes that the Government will shortly be able to indicate that the remaining instruments from the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164), the instruments adopted at the 68th Session, the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176) and all the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Honduras

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will provide soon, in respect of the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference, which have already been submitted, the information requested in the Memorandum adopted by the Governing Body (points II(b) and (c) and III of the questionnaire), as well as a copy of the document submitting the instruments adopted at the 75th Session. It requests the Government also to send a copy of the letter by which the instruments adopted at the 67th Session were submitted to the National Assembly by the President of the Republic and of the letter by which the Ministry of Foreign Affairs submitted to the Assembly the instruments adopted at the 70th Session, and to specify whether the other instruments adopted at the 74th Session and the instruments adopted at the 76th, 77th and 78th Sessions have been submitted. In addition, it would request the Government to indicate whether it has submitted the instruments adopted at the 79th, 80th, 81st and 82nd Sessions of the Conference.

Hungary

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will indicate soon that the instruments adopted at the 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to Parliament. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

India

The Committee notes the information provided by the Government that the Ministry of Labour is taking appropriate measures to bring the instruments adopted at the 82nd Session of the Conference before the competent authorities. With reference to its previous observation, it hopes that it will soon indicate that the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Jamaica

With reference to its previous observation, the Committee notes with satisfaction the information supplied by the Government in its report to the effect that the instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted to the competent authorities.

Kazakstan

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Lebanon

With reference to its previous comments, the Committee notes with interest the information supplied by the Government to the effect that the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. The Committee hopes that the Government will indicate shortly that the remaining instruments adopted from the 31st to the 50th Sessions of the Conference have been submitted to the competent authorities.

Lesotho

The Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 68th Session (Convention No. 157), 69th, 70th, 74th, 75th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Libyan Arab Jamahiriya

Further to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted between the 74th and 81st Sessions of the Conference have been submitted for examination to the sectors concerned with a view to aligning national laws and regulations with them. It expresses the hope that the Government will be in a position to indicate in the near future that the instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. It also asks the Government to indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Lithuania

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate soon that the instruments adopted at the 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Madagascar

The Committee notes that the Government has not replied to its previous observation. In its previous comments, the Committee noted the statement by a Government representative to the Conference Committee on the Application of Standards in 1995 to the effect that he undertook to submit the instruments adopted by the Conference to the National Assembly. It trusts that the Government will soon provide information on the proposals made at the time of submitting the instruments adopted at the 69th Session of the Conference and that it will indicate that the instruments adopted at the 55th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions have been submitted to the competent authorities. Furthermore, the Committee will be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Mauritania

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted.

Mauritius

With reference to its previous observation, the Committee notes with interest the information supplied by the Government to the effect that the remaining instruments adopted at the 60th Session (Conventions Nos. 141 and 142 and Recommendations Nos. 149 and 150) as well as the instruments adopted at the 70th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the National Assembly. It would be grateful if the Government would indicate whether the instruments adopted at the 63rd (Convention No. 149 and Recommendation No. 157), 65th (Convention No. 152 and Recommendation No. 160), 66th, 69th (Recommendation No. 167) and 82nd Sessions of the Conference have been submitted.

Mongolia

With reference to its previous observation, the Committee notes with interest the information supplied by the Government to the effect that the instruments adopted at the 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. It would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Morocco

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly supply, for the instruments adopted at the 74th, 75th, 76th and 79th Sessions of the Conference, which have been submitted to the competent authorities, the information (date of submission) requested under point II(a) of the questionnaire at the end of the Memorandum adopted by the Governing Body. It would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Mozambique

Further to its previous observation, the Committee notes the information provided by the Government during the 1996 International Labour Conference to the effect that Recommendations Nos. 177 and 178 (77th Session) have already been submitted and that the instruments adopted at the 78th, 79th and 80th Sessions of the Conference, which have already been submitted to the Council of Ministers, will be submitted to the Assembly. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted.

Nepal

With reference to its previous observation, the Committee notes with satisfaction that the instruments adopted from the 53rd to the 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted to the competent authorities.

Papua New Guinea

The Committee notes that the Government has not replied to its previous observation. In its previous comments, the Committee noted that the instruments adopted from the 70th to the 77th Sessions had been submitted to the National Executive Council — the highest government authority, which had approved them, and that their submission for adoption by the National Parliament was a mere formality. The Committee noted the statement of a Government representative to the Conference Committee on the Application of Standards in 1995 concerning the submission. The Committee hopes that the Government will shortly be able to indicate that the instruments adopted from the 66th to the 77th Sessions of the Conference, and those adopted at the 78th, 79th, 80th, 81st and 82nd Sessions have been submitted to the competent authorities. It recalls that the obligation to submit does not imply that governments have to propose the ratification of the Conventions or the acceptance of the Recommendations in question. Governments have full freedom as to the nature of the proposals they make concerning the Conventions and the Recommendations submitted to the competent authorities.

Paraguay

The Committee notes with regret that the Government has not replied to its previous observation. The Committee hopes that the Government will soon be in a position to indicate whether the instruments adopted at the 68th and 69th Sessions (Recommendation No. 167) and at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th and 78th Sessions of the Conference have been submitted to the competent authorities. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th, 80th, 81st and 82nd Sessions have been submitted to the competent authorities. The Committee recalls that the obligation to submit the instruments adopted by the Conference does not imply that ratification of the Conventions or acceptance of the Recommendations must be proposed.

Saint Lucia

The Committee notes with regret that, this year yet again, the Government has failed to reply to the observations it has been making since 1990. It trusts that the Government will shortly indicate that the instruments adopted at the 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th and 76th Sessions of the Conference have been submitted to the competent authorities and that it will provide the information and documents requested for the above instruments by the Memorandum adopted by the Governing Body, especially with regard to the nature of the competent authority and the Government's proposals or comments on the effect to be given to the instruments in question (points I(a) and II(b) of the questionnaire). In addition, it would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions have been submitted. In this connection, it recalls that the authorities to which these instruments must be submitted are those empowered to legislate and that governments have complete freedom as to the nature of the proposals made when submitting Conventions and Recommendations to the competent authorities.

Sao Tome and Principe

The Committee notes with regret that the Government has not replied to its previous observations. The Committee trusts that the Government will shortly indicate that the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Seychelles

Further to its previous observation, the Committee notes the statement by a Government representative to the Committee on the Application of Standards at the 1996 Conference concerning the reasons for the delay in the submission to the competent authorities of the instruments adopted by the Conference from its 63rd to its 81st Sessions. It expresses the firm hope that the Government will shortly indicate that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities, in accordance with article 19, paragraphs 5(b) and 6(b), of the ILO Constitution. It recalls in this respect that the authorities to which these instruments must be submitted are those empowered to legislate, in this instance, the People's Assembly. It also recalls that the obligation to submit does not imply that governments must propose the ratification of the Conventions or the acceptance of the Recommendations concerned. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities; they may also request technical assistance from the ILO in areas where they encounter difficulties.

Sierra Leone

The Committee notes with regret that the Government has not replied to its previous observation. It hopes that the Government will indicate soon that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference, as well as Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session, have been submitted to the competent authorities.

Solomon Islands

The Committee regrets to note that, once again this year, the Government has not replied to the observations it has been making since 1992. It hopes that the Government will indicate soon whether proposals have been made in regard to the instruments adopted at the 74th Session of the Conference, which had already been submitted to the competent authorities, and that it will specify their content, as prescribed in the Memorandum adopted by the Governing Body (Point II(c) of the questionnaire). The Committee hopes that the Government will shortly be in a position to announce that the instruments adopted at the 70th, 71st, 72nd, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions have been adopted. It would also be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

Suriname

With reference to its previous observation, the Committee notes with interest that the instruments adopted at the 65th Session (Recommendations Nos. 160 and 161), 67th Session (Recommendations Nos. 163, 164 and 165), 68th Session (Convention No. 158 and Recommendation No. 166), 71st Session (Convention No. 160 and Recommendation No. 170), 72nd, 79th and 80th Sessions of the Conference have been submitted to the National Assembly. The Committee hopes that the Government will indicate shortly that the instruments adopted at the 67th Session (Convention No. 154), 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Swaziland

The Committee notes with regret that the Government has not replied to its previous observation. It hopes that the Government will soon be able to indicate that the instruments adopted at the 78th, 79th, 80th, and 81st Sessions of the Conference, which are currently being studied by the Labour Advisory Board, have been submitted to the competent authorities. It again expresses the hope that the Government will shortly provide the information requested in the Memorandum approved by the Governing Body, particularly under points I and II(a) of the questionnaire, concerning the instruments adopted at the 68th, 69th, 71st and 72nd Sessions, which have already been submitted. Furthermore, it recalls in this connection that these instruments must be submitted to the authorities empowered to legislate. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted to the competent authorities.

Syrian Arab Republic

With reference to its previous observation, the Committee notes the information supplied by the Government in its report to the effect that the remaining instruments adopted at the 69th (Recommendations Nos. 167 and 168), 77th (Conventions Nos. 170 and 171), 78th (Convention No. 172) and 79th Sessions (Convention No. 173), which have not yet been submitted to Parliament, as well as those adopted at the 70th, 80th and 81st Sessions of the Conference have been submitted to the Council of Ministers. It hopes that the Government will be able to indicate soon that the instruments adopted at the 66th, 70th, 77th, 78th, 79th, 80th and 81st Sessions and the remaining instruments adopted at the 69th Session of the Conference (Recommendations Nos. 167 and 168) have been submitted to Parliament.

The Committee recalls that submission is a general obligation applying to Conventions as well as Recommendations. It does not imply that Governments must propose the ratification of the Conventions or the acceptance of the Recommendations concerned. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities. It hopes that the Government will indicate soon whether the above-mentioned instruments have been submitted and will supply in this respect the information requested in the Memorandum adopted by the Governing Body (points I and II of the questionnaire at the end of the Memorandum). The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

United Republic of Tanzania

Further to its previous observation, the Committee notes the statement made by a Government representative to the Conference Committee on the Application of Standards in 1996, that the instruments adopted at the various sessions and mentioned in the observation of the Committee of Experts had been examined by the Labour Advisory Council and have already been submitted to the Cabinet, which is the last stage before submission to Parliament. It hopes that the Government will shortly be in a position to announce that it has submitted to Parliament the instruments adopted at the 72nd, 74th, 75th and 76th Sessions of the Conference, and the instruments adopted at the 66th, 67th and 68th Sessions which have been transmitted to the Ministry of Labour and Development. Lastly, it hopes that the Government will indicate the date on which the instruments adopted from the 54th to the 65th Sessions, and at the 69th, 70th and 71st Sessions, were submitted to the Assembly. It would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Thailand

With reference to its previous observation, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

The former Yugoslav Republic of Macedonia

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Trinidad and Tobago

With reference to its previous comments, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Uruguay

The Committee refers to its previous observation in 1995 in which it requested the Government to supply information on the procedure aimed at ensuring that the competent authorities have the opportunity to institute a debate on whether they wish to take measures to give effect to the instruments adopted by the Conference. In this regard, the Committee notes the information contained in a letter from the Government dated 16 May 1996 in reply to the matters raised by the Inter-Union Assembly of Workers and the National Convention of Workers (PIT-CNT) in a communication received at the International Labour Office on 7 June 1995, which alleges that the Government of Uruguay violated article 19 of the Constitution of the International Labour Organization.

In connection with the above-mentioned observation, the Committee notes the information supplied by the Government in its report to the effect that ILO instruments are always submitted and the proposal by the Executive Authorities requesting ratification or expressing their opposition does not prevent the Legislative Authorities from studying the Conventions or Recommendations or from enacting a law containing the instrument with internal effect, including devolving responsibility on Ministers. What the Legislative Authorities cannot do, according to the National Constitution, is ratify a Convention which commits the Republic internationally without the prior due consent of the Executive Authorities.

The Committee notes that the instruments adopted at the 81st Session of the Conference have been submitted to the competent authorities. The Committee also notes that submission of the instruments adopted at the 80th Session of the Conference has been deferred. The Committee hopes that the Government will indicate shortly that the instruments adopted at the 80th and 82nd Sessions of the Conference have been submitted to the competent authorities.

Uzbekistan

The Committee notes that the Government has not replied to its previous direct requests. It hopes that it will indicate shortly that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Venezuela

Further to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 70th, 71st (Recommendation No. 171), 74th (Recommendation No. 173), 78th (Recommendation No. 179) and 82nd (Recommendation No. 183) Sessions of the Conference have been submitted to the competent authority. The Committee hopes that the Government will communicate the remaining instruments adopted at the 71st (Convention No. 161), 74th (Conventions Nos. 163, 164, 165 and 166 and Recommendation No. 174), 75th, 76th, 77th, 78th (Convention No. 172), 79th, 80th, 81st and 82nd (Convention No. 176) Sessions have been submitted to the competent authorities.

Yemen

The Committee notes that the Government has not replied to its previous observation. It hopes that it will soon indicate that the instruments adopted at the 74th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would also indicate whether the instruments adopted at the 82nd Session have been submitted.

Zaire

The Committee notes with regret that, this year yet again, the Government has not responded to its previous observations. In its earlier comments, the Committee noted the statement made by a Government representative to the Conference Committee on the Application of Standards in 1992 that the procedure for submitting the instruments adopted from the 70th to the 77th Sessions of the Conference to the competent authorities was underway, that the instruments adopted up to and including at the 69th Session were submitted only to the President of the Republic, and that when the National Conference has completed its work, adopted instruments will be submitted to both the President of the Republic and the National Assembly. The Committee also noted the discussion that followed that statement, and the conclusions adopted by the Conference Committee.

The Committee hopes that the Government will shortly be in a position to announce that the instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. It also hopes that the Government will shortly be able to announce that the instruments adopted at the 62nd and from the 66th to 69th Sessions of the Conference, already submitted to the President of the Republic, have been submitted also to the National Assembly. In addition, the Committee asks the Government to indicate whether the instruments adopted at the 82nd Session of the Conference have been submitted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Argentina, Austria, Bangladesh, Barbados, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cape Verde, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Dominica, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Grenada, Guinea-Bissau, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Liberia, Malawi, Malaysia, Mali, Malta, Mexico, Republic of Moldova, Myanmar, Namibia, Netherlands, Niger, Nigeria, Oman, Pakistan, Panama, Peru, Portugal, Qatar, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Turkmenistan, Uganda, United Arab Emirates, United Kingdom, Viet Nam, Zambia, Zimbabwe.*

Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

(31st to 82nd Sessions of the International Labour Conference, 1948-95)[1]

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. Ratified Conventions are considered as having been submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31 to 70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Albania	–	78, 79, 80, 81 and 82
Algeria	47 to 82	–
Angola	61 to 77	78, 79, 80, 81 and 82
Antigua and Barbuda	68	69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Argentina	31 to 81	82
Armenia	–	80, 81 and 82
Australia	31 to 82	–
Austria	31 to 80	81 and 82
Azerbaijan	79 (C 173), 80 to 82	79 (R 180)
Bahamas	61 to 76, 81 and 82	77, 78, 79 and 80
Bahrain	63 to 82	–
Bangladesh	58 to 76, 77 (C 171; R 180) and 80	77 (C 170; R 177), 78, 79, 81 and 82
Barbados	51 to 81	82
Belarus	37 to 81	82
Belgium	31 to 75, 77 and 80	76, 78, 79, 81 and 82
Belize	68 to 76	77, 78, 79, 80, 81 and 82
Benin	45 to 77	78, 79, 80, 81 and 82

[1] The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Bolivia	31 to 79	80, 81 and 82
Bosnia and Herzegovina	–	80, 81 and 82
Botswana	64 to 82	–
Brazil	31 to 50, 51 (C 127; R 128, 129, 130, 131), 53 (R 133, 134), 54 to 62, 63 (C 148; R 156, 157), 64 (R 158, 159), 65, 66, 67 (C 154, 155; R 163, 164, 165), 68 (C 158; R 166), 69 to 77	51 (C 128), 52, 53 (C 129, 130), 63 (C 149), 64 (C 150, 151), 67 (C 156), 68 (C 157), 78, 79, 80, 81 and 82
Bulgaria	31 to 78	79, 80, 81 and 82
Burkina Faso	45 to 76	77, 78, 79, 80, 81 and 82
Burundi	47 to 81	82
Cambodia	53, 54 and 56	55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Cameroon	44 to 68, 72 and 74	69, 70, 71, 75, 76, 77, 78, 79, 80, 81 and 82
Canada	31 to 82	–
Cape Verde	65 to 81	82
Central African Republic	45 to 74	75, 76, 77, 78, 79, 80, 81 and 82
Chad	45 to 79	80, 81 and 82
Chile	31 to 74, 76 and 77	75, 78, 79, 80, 81 and 82
China	69 to 80	81 and 82
Colombia	31 to 70, 71 (C 160; R 170, 171), 72 (R 172), 74, 75 (C 167; R 175, 176), 76 to 78, 79 (R 180), 80 and 81 (C 175)	71 (C 161), 72 (C 162), 75 (C 168), 79 (C 173), 81 (R 182) and 82
Comoros	65 to 78	79, 80, 81 and 82
Congo	45 to 53, 54 (C 131, 132), 55 (C 133, 134), 56, 58 (C 138; R 146), 59, 63 (C 149; R 157), 64 to 66 and 67 (C 154, 155)	54 (R 135, 136), 55 (R 137, 138, 139, 140, 141, 142), 58 (C 137; R 145), 60, 61, 62, 63 (C 148; R 156), 67 (C 156; R 163, 164, 165), 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Costa Rica	31 to 74, 75 (C 168; R 175, 176), 76, 77, 78 (C 172), 79 (C 173), 81 (C 175) and 82 (C 176)	75 (C 167), 78 (R 179), 79 (R 180), 80, 81 (R 182) and 82 (R 183 and Protocol of 1995)
Côte d'Ivoire	45 to 82	–

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Croatia	–	80, 81 and 82
Cuba	31 to 82	–
Cyprus	45 to 81	82
Czech Republic	80	81 and 82
Denmark	31 to 82	–
Djibouti	64, 65, 67, 71 and 72	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Dominica	68 to 79	80, 81 and 82
Dominican Republic	31 to 78, 79 (C 173), 80 (C 174) and 81 (C 175)	79 (R 180), 80 (R 181), 81 (R 182) and 82
Ecuador	31 to 74, 75 (R 175 and 176), 76, 77 (R 177 and 178), 78 (R 179), 79 (R 180), 80 (R 181), 81 (R 182) and 82 (R 183)	74, 75 (C 167 and 168), 77 (C 170 and 171), 78 (C 172), 79 (C 173), 80 (C 174), 81 (C 175) and 82 (C 176 and Protocol of 1995)
Egypt	31 to 82	–
El Salvador	31 to 61, 63 (C 149), 64 (C 150), 69 (C 159; R 168) and 71 to 81	62, 63 (C 148; R 156, 157), 64 (C 151; R 158, 159), 65, 66, 67, 68, 69 (R 167), 70 and 82
Equatorial Guinea	67 to 79	80, 81 and 82
Eritrea	80	
Estonia	79 to 81	82
Ethiopia	31 to 82	–
Fiji	59 to 80	81 and 82
Finland	31 to 81	82
France	31 to 81	82
Gabon	45 to 72 and 75 to 81	74 and 82
Gambia		82
Georgia	–	80, 81 and 82
Germany	34 to 74, 75 (C 167; R 175), 76, 80 to 82	75 (C 168; R 176), 77, 78 and 79
Ghana	40 to 79	80, 81 and 82
Greece	31 to 82	–
Grenada	66 to 80	81 and 82
Guatemala	31 to 70, 71 (C 160, 161; R 171), 72, 75 (C 167; R 175) and 76	71 (R 170), 74, 75 (C 168; R 176), 77, 78, 79, 80, 81 and 82

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Guinea	43 to 75	76, 77, 78, 79, 80, 81 and 82
Guinea-Bissau	63 to 78	79, 80, 81 and 82
Guyana	50 to 80	81 and 82
Haiti	31 to 66, 67 (C 156; R 165), 69, 70 to 74 and 75 (C 167)	67 (C 154, 155; R 163, 164), 68, 75 (C 168; R 175, 176), 76, 77, 78, 79, 80, 81 and 82
Honduras	39 to 66, 68, 69, 71, 72, 74 (C 164, 165, 166; R 174), 75 (C 167) and 76	67, 70, 74 (C 163; R 173), 75 (C 168; R 175, 176), 77, 78, 79, 80, 81 and 82
Hungary	31 to 75	76, 77, 78, 79, 80, 81 and 82
Iceland	31 to 82	–
India	31 to 77	78, 79, 80, 81 and 82
Indonesia	33 to 81	82
Iran, Islamic Republic of	31 to 81	82
Iraq	31 to 82	–
Ireland	31 to 71, 74, 75 and 77	72, 76, 78, 79, 80, 81 and 82
Israel	32 to 80	81 and 82
Italy	31 to 81	82
Jamaica	47 to 81	82
Japan	35 to 82	–
Jordan	39 to 82	–
Kazakstan	–	80, 81 and 82
Kenya	48 to 80	81 and 82
Republic of Korea	79 to 82	–
Kuwait	45 to 76, 78, 79, 80 (C 174) and 81	77 and 80 (R 181) and 82
Kyrgyzstan	–	79, 80, 81 and 82
Lao People's Democratic Republic	48 to 81	82
Latvia	80	79, 81 and 82

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Lebanon	31 (C 88, 89, 90; R 83), 32 (C 95, 98; R 85), 34 (C 100; R 90), 35 (C 102, 103), 40 (C 105, 106; R 103), 42 (C 111; R 111), 44 (C 115), 45 (C 116), 46 (C 117, 118), 47 (C 119), 48 (C 120, 121, 122; R 120, 122), 49 (C 123, 124), 50 (C 125, 126) and 51 to 82	31 (C 87), 32 (C 91, 92, 93, 94, 96, 97; R 84, 86, 87), 33, 34 (C 99; R 89, 91, 92), 35 (C 101; R 93, 94, 95), 36, 37, 38, 39, 40 (C 107; R 104), 41, 42 (C 110; R 110), 43, 44 (R 113, 114), 45 (R 115), 46 (R 116, 117), 47 (R 118, 119), 48 (R 121), 49 (R 123, 124, 125) and 50 (R 126, 127)
Lesotho	66 to 81	82
Liberia	31 to 75	76, 77, 78, 79, 80, 81 and 82
Libyan Arab Jamahiriya	35 to 72	74, 75, 76, 77, 78, 79, 80, 81 and 82
Lithuania	–	79, 80, 81 and 82
Luxembourg	31 to 82	–
Madagascar	45 to 54, 56 to 70	55, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Malawi	49 to 81	82
Malaysia	41 to 76	77, 78, 79, 80, 81 and 82
Mali	44 to 78	79, 80, 81 and 82
Malta	49 to 82	–
Mauritania	45 to 80	81 and 82
Mauritius	53 to 62, 63 (C 148; R 156), 64, 65 (C 153; R 161), 67, 68, 69 (C 159; R 168) and 70 to 81	63 (C 149; R 157), 65 (C 152; R 160), 66, 69 (R 167) and 82
Mexico	31 to 81	82
Republic of Moldova	79 and 80	81 and 82
Mongolia	53 to 81	82
Morocco	39 to 76 and 79	77, 78, 80, 81 and 82
Mozambique	61 to 77	78, 79, 80, 81 and 82
Myanmar	31 to 82	–
Namibia	78 to 82	–
Nepal	51 to 81	82
Netherlands	31 to 81	82
New Zealand	31 to 82	–
Nicaragua	40 to 82	–

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Niger	45 to 81	82
Nigeria	45 to 79, 81 and 82	80
Norway	31 to 82	–
Oman	81 and 82	–
Pakistan	31 to 80	81 and 82
Panama	31 to 81	82
Papua New Guinea	61 to 65	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Paraguay	40 to 67 and 69 (C 159; R 168)	68, 69 (R 167), 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Peru	31 to 82	–
Philippines	31 to 82	–
Poland	31 to 82	–
Portugal	31 to 82	–
Qatar	58 to 82	–
Romania	39 to 82	–
Russian Federation	37 to 82	–
Rwanda	47 to 79 and 81	80 and 82
Saint Kitts and Nevis		82
Saint Lucia	–	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Saint Vincent and the Grenadines		82
San Marino	69 to 81	82
Sao Tome and Principe	68 to 76	77, 78, 79, 80, 81 and 82
Saudi Arabia	61 to 82	–
Senegal	44 to 78	79, 80, 81 and 82
Seychelles	–	63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Sierra Leone	45 to 62 (C 145, 147; R 153, 155)	62 (C 146; R 154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Singapore	50 to 82	–
Slovakia	79 to 81	82

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Slovenia	79 to 82	–
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81 and 82
Somalia	45 to 75	76, 77, 78, 79, 80, 81 and 82
South Africa	–	81 and 82
Spain	39 to 62, 63 (C 148; R 156), 64 to 74, 75 (C 167; R 175) and 76 to 78	63 (C 149; R 157), 75 (C 168; R 176), 79, 80, 81 and 82
Sri Lanka	31 to 78	79, 80, 81 and 82
Sudan	39 to 80	81 and 82
Suriname	61 to 66, 67 (R 163, 164 and 165) and 68 to 80	67 (C 154), 81 and 82
Swaziland	60 to 77	78, 79, 80, 81 and 82
Sweden	31 to 81	82
Switzerland	31 to 81	82
Syrian Arab Republic	31 to 65, 67, 68, 69 (C 159) and 71 to 76	66, 69 (R 167, 168), 70, 77, 78, 79, 80, 81 and 82
Tajikistan	81 and 82	–
United Republic of Tanzania	46 to 65 and 69 to 71	66, 67, 68, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Thailand	31 to 82	–
The former Yugoslav Republic of Macedonia	–	80, 81 and 82
Togo	44 to 82	–
Trinidad and Tobago	47 to 82	–
Tunisia	39 to 82	–
Turkey	31 to 82	–
Turkmenistan	–	81 and 82
Uganda	47 to 80	81 and 82
Ukraine	37 to 82	–
United Arab Emirates	58 to 81	82
United Kingdom	31 to 82	–
United States	31 to 82	–
Uruguay	31 to 79 and 81	80 and 82
Uzbekistan	–	80, 81 and 82

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Venezuela	31 to 70, 71 (C 160; R 170 and 171), 72, 74 (R 173), 78 (R 179) and 82 (R 183)	71 (C 161), 74 (C 163, 164, 165 and 166 and R 174), 75, 76, 77, 78 (C 172), 79, 80, 81 and 82 (C 176)
Viet Nam	80 to 82	–
Yemen	49 to 72 and 75	74, 76, 77, 78, 79, 80, 81 and 82
Yugoslavia	31 to 75	76, 77, 78, 79, 80, 81 and 82
Zaire	45 to 69	70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Zambia	49 to 80	81 and 82
Zimbabwe	66 to 79	80, 81 and 82

Appendix II. Overall position of member States as at 13 December 1996

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the Government)	
31 (June 1948)	58	2	–	60
32 (June 1949)	59	2	–	61
33 (June 1950)	61	–*	2	63
34 (June 1951)	62	2	–	64
35 (June 1952)	64	2	–	66
36 (June 1953)	64	–	2	66
37 (June 1954)	67	–*	2	69
38 (June 1955)	67	1	1	69
39 (June 1956)	74	–	2	76
40 (June 1957)	75	2	–	77
41 (April/May 1958)	77	1	1	79
42 (June 1958)	78	1	–	79
43 (June 1959)	78	1	1	80
44 (June 1960)	81	1	1	83
45 (June 1961)	99	2	–	101
46 (June 1962)	101	1	–	102
47 (June 1963)	107	1	–	108
48 (June/July 1964)	109	1	–	110
49 (June 1965)	113	1	–	114
50 (June 1966)	112	2	1	115
51 (June 1967)	117	–	–	117
52 (June 1968)	116	–*	2	118
53 (June 1969)	120	1	–	121
54 (June 1970)	118	1	2	121
55 (October 1970)	118	1	2	121
56 (June 1971)	121	–	–	121
58 (June 1973)	120	2	1	123
59 (June 1974)	123	1	1	125

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the Government)	
60 (June 1975)	124	2	–	126
61 (June 1976)	124	–	7	131
62 (October 1976)	125	1	6	132
63 (June 1977)	114	5	16	135
64 (June 1978)	128	3	5	136
65 (June 1979)	127	2	10	139
66 (June 1980)	122	–*	22	144
67 (June 1981)	128	5	12	145
68 (June 1982)	128	4	18	150
69 (June 1983)	131	3	16	150
70 (June 1984)	127	–*	23	150
71 (June 1985)	128	6	16	150
72 (June 1986)	130	1	19	150
74 (Sept./Oct. 1987)	124	1	25	150
75 (June 1988)	131	4	15	150
76 (June 1989)	108	–	42	150
77 (June 1990)	98	–	52	150
78 (June 1991)	93	–	56	149
79 (June 1992)	80	1	76	157
80 (June 1993)	89	1	81	171
81 (June 1994)	75	6	90	171
82 (June 1995)	49	2	123	174

* At this session the Conference adopted one Recommendation only.

Appendix III. Summary of information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions and Recommendations adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the Conventions and Recommendations to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification. In this connection, the summarized information will henceforth appear in an annex to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the Convention and Recommendation adopted by the Conference at its 82nd Session held in Geneva from 6 to 23 June 1995.

The period of one year provided for the submission to the competent authorities of the instruments in question expired on 23 June 1996 and the period of 18 months on 23 December 1996.

The appendix also contains a summary of additional information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference at its 31st to 81st Sessions (1948 to 1994). This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the close of the 83rd Session of the Conference and which could not, therefore, be laid before the Conference at that session.

List of instruments adopted by the Conference at its 71st to 82nd Sessions

71st Session (1985)
Labour Statistics Convention (No. 160);
Occupational Health Services Convention (No. 161);
Labour Statistics Recommendation (No. 170);
Occupational Health Services Recommendation (No. 171).

72nd Session (1986)
Asbestos Convention (No. 162);
Asbestos Recommendation (No. 172).

73rd Session (1987)
The Conference did not adopt any Conventions or Recommendations at this session.

74th (Maritime) Session (1987)
Seafarers' Welfare Convention (No. 163);
Health Protection and Medical Care (Seafarers) Convention (No. 164);

Social Security (Seafarers) (Revised) Convention (No. 165);
Repatriation of Seafarers (Revised) Convention (No. 166);
Seafarers' Welfare Recommendation (No. 173);
Repatriation of Seafarers Recommendation (No. 174).

75th Session (1988)
Safety and Health in Construction Convention (No. 167);
Employment Promotion and Protection against Unemployment Convention (No. 168);
Safety and Health in Construction Recommendation (No. 175);
Employment Promotion and Protection against Unemployment Recommendation (No. 176).

76th Session (1989)
Indigenous and Tribal Peoples Convention (No. 169).

77th Session (1990)
Chemicals Convention (No. 170);
Night Work Convention (No. 171);
Chemicals Recommendation (No. 177);
Night Work Recommendation (No. 178).

78th Session (1991)
Working Conditions (Hotels and Restaurants) Convention (No. 172);
Working Conditions (Hotels and Restaurants) Recommendation (No. 179).

79th Session (1992)
Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173);
Protection of Workers' Claims (Employer's Insolvency) Recommendation (No. 180).

80th Session (1993)
Prevention of Major Industrial Accidents Convention (No. 174);
Prevention of Major Industrial Accidents Recommendation (No. 181).

81st Session (1994)
Part-Time Work Convention (No. 175);
Part-Time Work Recommendation (No. 182).

82nd Session (1995)
Safety and Health in Mines Convention, 1995 (No. 176);
Safety and Health in Mines Recommendation, 1995 (No. 183).

Summary of information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference at its 82nd Session (Geneva, 1995) and supplementary information on the texts adopted at its 31st to 81st Sessions (1948-94)

Algeria. The instruments adopted at the 74th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Australia. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authorities.

Azerbaijan. The instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to Parliament.

Bahamas. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Bahrain. The instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Botswana. The instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Canada. The instruments adopted at the 81st and 82nd Sessions of the Conference were submitted to the competent authorities on 30 May 1996.

Chad. The instruments adopted at the 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authority.

Côte d'Ivoire. The instruments adopted at the 82nd Session of the Conference were submitted to the National Assembly on 11 April 1996.

Cuba. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. Convention No. 159 (69th Session) was ratified on 3 October 1996.

Denmark. The instruments adopted at the 82nd Session of the Conference have been submitted to Parliament.

Egypt. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

El Salvador. The instruments adopted at the 71st (Convention No. 161 and Recommendation No. 171), 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authority. Convention No. 138 (58th Session) was ratified on 23 January 1996.

Ethiopia. The instruments adopted at the 82nd Session of the Conference were submitted to the competent authority on 15 May 1996.

Germany. The instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities.

Greece. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent autorities.

Guyana. The instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authority. Convention No. 166 (74th Session) was ratified on 10 June 1996 and Convention No. 172 (78th Session) was ratified on 20 August 1996.

Iceland. The instruments adopted at the 82nd Session of the Conference were submitted to Parliament on 28 May 1996.

Iraq. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Jamaica. The instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authority. Convention No. 144 (61st Session) was ratified on 23 October 1996.

Japan. The instruments adopted at the 82nd Session of the Conference were submitted to the competent authority on 4 June 1996.

Jordan. The instruments adopted at the 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Republic of Korea. The instruments adopted at the 82nd Session of the Conference were submitted to the National Assembly on 3 January 1996.

Lebanon. The instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Lesotho. The instruments adopted at the 68th (Convention No. 157), 69th, 70th, 74th, 75th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authority.

Luxembourg. The instruments adopted at the 82nd Session of the Conference were submitted to the Chamber of Deputies on 14 December 1995.

Malta. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Mauritania. The instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authority.

Mauritius. The instruments adopted at the 60th (Conventions Nos. 141 and 142, and Recommendations Nos. 149 and 150), 70th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authority. Convention No. 175 (81st Session) was ratified on 14 June 1996.

Myanmar. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Namibia. The instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to Parliament. Conventions Nos. 150 (64th Session) and 158 (68th Session) were ratified on 28 June 1996.

Nepal. The instruments adopted from the 53rd to the 81st Session of the Conference have been submitted to the competent authority.

New Zealand. The instruments adopted at the 82nd Session of the Conference were submitted to the House of Representatives on 20 August 1996.

Nicaragua. The instruments adopted at the 82nd Session of the Conference have been submitted to the National Assembly.

Nigeria. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Norway. The instruments adopted at the 82nd Session of the Conference have been submitted to Parliament. Convention No. 94 (32nd Session) was ratified on 12 February 1996.

Oman. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Peru. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Philippines. The instruments adopted at the 78th, 79th and 82nd Sessions of the Conference have been submitted to the competent authority.

Poland. The instruments adopted at the 82nd Session of the Conference were submitted to Parliament on 20 May 1996.

Portugal. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority. Conventions Nos. 158 (68th Session) and 171 (77th Session) were ratified on 27 November 1995.

Qatar. The instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Romania. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Russian Federation. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Saudi Arabia. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Singapore. The instruments adopted at the 82nd Session of the Conference have been submitted to Parliament.

Slovenia. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Tajikistan. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Thailand. The instruments adopted at the 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to Parliament.

Togo. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Trinidad and Tobago. The instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Tunisia. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Turkey. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Ukraine. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

United Kingdom. The instruments adopted at the 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

United States. The instruments adopted at the 82nd Session of the Conference have been submitted to the competent authority.

Viet Nam. The instruments adopted at the 81st and 82nd Sessions of the Conference were submitted to the National Assembly on 30 November 1995.

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